DOCUMENT RESUME

ED 429 978 SP 038 485

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| TITLE | Peer Assistance & Peer Review. An AFT/NEA Handbook. |
| INSTITUTION | National Education Association, Washington, DC.; American Federation of Teachers, Washington, DC. |
| PUB DATE | 1998-09-00 |
| NOTE | 106p.; Prepared for "Shaping the Profession that Shapes the Future," an AFT/NEA Conference on Teacher Quality (Washington, DC, September 25-27, 1998). |
| AVAILABLE FROM | American Federation of Teachers, 555 New Jersey Avenue, NW, Washington, DC 20001-2079; Tel: 202-393-8636; Fax: 202-879-4537. |
| PUB TYPE | Guides - Non-Classroom (055) -- Speeches/Meeting Papers (150) |
| EDRS PRICE | MF01/PC05 Plus Postage. |
| DESCRIPTORS | *Beginning Teacher Induction; Beginning Teachers; Educational Quality; Elementary Secondary Education; Evaluation Methods; Mentors; *Peer Evaluation; Program Development; Teacher Associations; Teacher Competencies; Teacher Evaluation; Teachers; Teaching Skills; Unions |
| IDENTIFIERS | American Federation of Teachers; National Education Association; *Peer Coaching |

ABSTRACT

This manual assists American Federation of Teachers (AFT) and National Education Association (NEA) affiliates interested in developing peer assistance and/or peer assistance and review programs in their local sites. The first section provides the context in which these programs are developing and their importance to union efforts to increase teacher quality. The second section presents materials regarding how best to communicate what peer programs are all about in order to develop support for the program among affiliate members and with management. The third section describes the features that must be addressed in developing a peer assistance or peer assistance and review program (e.g., who is assisted, who does the assisting, how do the programs operate, and what are the legal considerations). The fourth section discusses contract language considerations as affiliates negotiate with districts to develop peer assistance and peer assistance and review programs for professional staff. The eight appendixes present AFT and NEA policy supporting peer programs; peer mentoring and/or evaluation programs; a legal analysis of the NEA Peer Assistance and Peer Review Resolution; AFT's questions and answers regarding a union's duty to fairly represent its members; legal protections for teacher employment; peer assistance and review programs: guide to contract language; Cincinnati Public Schools peer assistance and evaluation guidelines; and contract language for peer programs. (SM)

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ED 429 978

# Peer Assistance & Peer Review

## AN AFT/NEA HANDBOOK

Prepared for

**SHAPING THE PROFESSION THAT SHAPES THE FUTURE**

*An AFT/NEA Conference on Teacher Quality*

*September 25–27, 1998*
*Washington, D.C.*

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# Introduction

In the early 1980s, teacher unions began collective bargaining for peer assistance and peer assistance and review programs. The Toledo Federation of Teachers initiated the first such program in 1981 after several years of negotiation with the local school district. That program provided peer assistance and peer review to new teachers and to veteran teachers who were experiencing difficulties in the classroom. Since that time, peer assistance or peer assistance and review programs have sprung up across the country. Both the American Federation of Teachers (AFT) and the National Education Association (NEA) have passed resolutions that pertain to such programs (Appendix A).

This introduction identifies two threshold issues that a local affiliate must address when designing a peer assistance program or a peer assistance and review program:

1) Will the program entail peer review—a formal evaluation by peers that can significantly influence an individual's employment status—as well as peer assistance? Or will it provide peer assistance only?

2) Which teachers will the program serve?

The specific nature of the issues posed, as well as the range of appropriate resolutions, can vary depending on whether the program is a peer assistance program (such as New York City), or a peer assistance and review program (such as Columbus, Toledo or Cincinnati, Ohio, or Rochester, New York).

## Peer Assistance and Review: What's It All About?

Peer assistance and peer review are actually two distinct functions. *Peer assistance* aims to help new and veteran teachers improve their knowledge and skills. Such a program links new teachers—or struggling veteran teachers—with consulting teachers who provide ongoing support through observing, modeling, sharing ideas and skills and recommending materials for further study. *Peer review* adds one significant element to peer assistance—the consulting teachers conduct formal evaluations and make recommendations regarding the continued employment of participating teachers.

Peer assistance and peer review are separate components. A peer assistance program can exist—and significantly help improve teacher quality—without peer review. But peer review programs do not operate independently of peer assistance. The AFT and the NEA both believe that peer review without intensive peer assistance for the teachers in the program does not represent sound educational policy.

In a peer review process, the local union shares responsibility with the school district for *reviewing teacher performance and making recommendations* to the district administration about continuing employment of teachers receiving peer assistance. *The final employment decision concerning continued employment, however, is made by the district administration and the board of education.* Nonetheless, the recommendations of the joint affiliate/school district governing body should be routinely accepted by the

school district or the program does not truly perform a *peer* review function. In both peer assistance and peer review, the local affiliate is responsible for ensuring that all aspects of the process are fair and equitable to participating teachers.

All peer assistance and peer assistance and review programs for which the union, along with the district, has assumed responsibility, have a number of features in common. They all:

- are created through collective bargaining agreements or through joint affiliate/school district agreements in non-bargaining states;
- require a shared focus on improving teaching on the part of teachers and their union and the school district, including administrators;
- involve joint decisions by teachers and administrators;
- provide assistance to new teachers and/or veteran teachers who are at risk of termination due to poor performance; and/or veteran teachers voluntarily seeking to improve their teaching practice;
- have a process for identifying and training outstanding teachers to provide peer assistance, and, in a peer assistance and review program, peer evaluation; and
- have resources dedicated to implementing the program.

Peer assistance and review programs vary in regard to:

- who is served;
- the extent and kinds of services provided;
- whether the peer assistance is confidential;
- whether peer assistance is mandatory;
- whether consulting teachers evaluate teachers;
- whether consulting teachers make recommendations regarding termination or continued employment; and
- whether, or in what circumstances, terminated employees are provided with union representation.

While some programs consist only of peer assistance, there are no peer review programs, nor should there ever be, without a peer assistance component. Where peer review is part of the process, the history of such programs indicate that they are more stringent than previous administrative efforts regarding re-employment, and are more effective than traditional teacher evaluation systems in improving performance or effecting the efficient termination of non-performing teachers.[1]

Programs that entail peer review as well as peer assistance are often more controversial than those that entail peer assistance only. This is because they involve the local affiliate and some of its members in making recommendations to school districts about whether beginning and new district teachers and veteran teachers experiencing serious difficulties with their teaching will remain employed in their current job.[2] The

[1] See Appendix B for a thumbnail sketch of several long-term peer assistance and peer assistance and review programs.

more controversial nature of peer assistance and review programs may require a lengthier period of studying how different programs work and more extensive dialogue with the local affiliate's members and the school district before they can be adopted.

## Which Teachers Will Be Assisted?

Existing peer assistance and review programs, which raise and address the issue of whether a teacher will remain in his or her current job, as well as offer intensive assistance to such teachers, are targeted to two categories of teachers:

- first-year teachers and other teachers new to a school system;
- veteran teachers experiencing serious problems with their teaching who have been referred into the program for "intervention," through a carefully safeguarded process.

In no way does the existence of a peer assistance and review program for these categories of teachers, who may have the greatest need for help in becoming proficient professionals, obviate the need for a high-quality professional growth environment and opportunities for *all* teachers and other education employees. While not a focus of these materials, appropriate peer assistance programs and opportunities can help meet this need.[1]

## Purpose and Organization of this Manual

This manual is designed to assist affiliates interested in developing peer assistance and/or peer assistance and review programs in their local sites. The first section provides the context in which these programs are developing and their importance to union efforts to increase teacher quality. The next section presents materials regarding how best to communicate what peer programs are all about in order to develop support for the program among affiliate members and with management. The following section describes the features that must be addressed in developing a peer assistance or peer assistance and review program; e.g., who is assisted, who does the assisting, how the programs operate, what the legal considerations are. The final section discusses contract language considerations as affiliates negotiate with districts to develop peer assistance and peer assistance and review programs for professional staff.

[1] There is a tradition of union involvement in decisions to terminate employment for their members. This is not the case in an industrial union model—currently the dominant model for American education unions—where employment decisions are made solely by management. In a craft union model, however, unions play a major role in "policing the profession" in order to ensure that quality standards are met.

[1] However, peer *review* for veteran teachers in good standing—i.e., those who have not been referred into a peer assistance and review program for "intervention"—is not appropriate, because there is no job performance issue that creates a legitimate need for a formal review and recommendation regarding fitness for continued employment.

# The Context

Teacher quality is emerging as a major concern as issues of accountability loom large in public education. Teachers generally retain a high degree of respect in public opinion polls. But widespread media reports that question the abilities of the teacher pool have served to undermine the public's confidence in the competency of the teaching profession.

For example, the results of a recent Massachusetts teacher licensing exam—more than 55 percent of the teacher candidates initially did not pass a literacy skills test, pegged to eleventh-grade competence—made headlines across the nation. Last year, the *New York Times* featured a story, also widely cited, about a Long Island school district that administered a screening test that featured questions from twelfth-grade regents exams in New York state. More than 75 percent of the applicants failed the assessment. And, with alarming regularity, national news magazines feature tales, often incorrect or grossly exaggerated, about the huge costs and protracted legal maneuvers necessary to dismiss poorly performing teachers.

In this charged policy context, teacher quality has become central to the debate over how to improve student performance. As the 1996 report of the National Commission on Teaching and America's Future, *What Matters Most,* stated: "What teachers know and can do makes the crucial difference in what children can learn."

The public, policymakers and the education community all agree: Improving teacher quality *is* essential to improving student achievement. What is in contention here is how these different groups define "teacher quality" and view "teacher improvement," and the implications of these diverse perspectives for teacher evaluation, in general, and peer assistance and peer assistance and review programs, in particular.

The public, for its part, is concerned about the quality of schools and the teachers in them. While a large majority of the public (85 percent) trusts teachers to make sound educational decisions,[4] citizens also believe that a small percentage of teachers are not qualified and should not be teaching. Moreover, the public is frustrated by what it perceives as an inability to remove inadequate teachers from the classroom. The public attributes the difficulty in firing bad teachers to rules and regulations developed by teacher unions.[5]

For the public, then, the issue of improving teaching revolves around terminating incompetent teachers. Viewed in this light, the purpose of teacher evaluation is to identify and ferret out the "rotten apples."[6]

Teachers share many of the public's concerns about instructional quality and

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[4] Johnson, J. and Immerwahr, J., *First Things First: What Americans Expect from Public Schools.* New York: The Public Agenda Foundation, 1994.

[5] The public rarely understands the problems with teacher dismissal as evidence of administrator weakness or incompetence in regard to hiring and tenure decisions, nor of their failure to follow due process procedures.

[6] This belief is often reflected by media pundits and public officials as well, who seek quick policy "fixes" for the complex issue of improving teacher quality—i.e., get rid of tenure.

teacher accountability. A 1997 survey commissioned by the AFT reveals that teachers also believe that some of their colleagues (about 5 percent) are poor teachers and should not remain in the classroom. And more than a fifth (21 percent) say that tenure is sometimes awarded to teachers who do not meet professional standards. Moreover, teachers believe, by a two-to-one margin, that it is possible, even desirable, to develop procedures to more easily dismiss poor-quality teachers, while still protecting due-process rights. The union, they say, has a responsibility to promote quality in the teaching profession.[7]

While they support improving teacher evaluation systems and streamlining procedures for dismissing poor-quality teachers, generally teachers believe that the best way to ensure quality teaching is to provide *support and assistance* to new teachers and veteran teachers whose performance evaluations reveal significant weaknesses. For teachers, ensuring quality is not merely a matter of finding more efficient means to remove poor teachers from classrooms. Teacher quality can only be guaranteed by a more comprehensive approach that supports beginning teachers and provides opportunities for less-than-stellar teachers to improve their practice. Indeed, teachers overwhelmingly support the notion of peer assistance programs to help new and struggling teachers.

Many in the education reform community, including researchers and leaders of education organizations, see the issue of teacher quality as one of generally mediocre performance of the teaching force. For them, the dilemma is not simply how to remove incompetent teachers from classrooms; rather, the quality problem, they believe, is traceable to under-investment in teacher education, generally low standards for entry into the profession, poor induction procedures, weak continuing professional development, and administrative hiring and assignment practices that place unprepared and under-prepared individuals in teaching positions. Given such views, many reformers, like teachers themselves, see peer assistance programs as an opportunity to create a teacher development system designed to identify teaching strengths and assist in improving weaknesses of the teacher work force.

The public and policymakers, teachers, and professionals in the education reform arena all acknowledge the importance of teacher quality. But all are also talking past each other when discussions of quality intersect conversations about the role and function of teacher evaluation. The public and policymakers are primarily concerned with "accountability by ouster,"—weeding out incompetent teachers. Teachers and other education professionals tend to focus more intensely on improving practice and cultivating teacher potential.

What is critical here is that peer assistance and review programs address concerns about teacher quality from both perspectives. Such programs focus on the improvement of teachers' knowledge and skills and also provide a fair, effective and equitable alternative for counseling out individuals who should not be in the classroom. In the next 10 years, it is estimated, affiliates that have peer programs in place will likely have assisted more that 50 percent of their district's teaching force. It is for these reasons,that the AFT encourages affiliates to consider developing peer assistance and review programs in collaboration with their local school districts. The NEA, for its part, helps locals interested in developing peer assistance and review programs. NEA believes that the decision to adopt a peer assistance and review program ought to be made at the local level and has developed criteria that define the elements a program should meet to ensure quality and protect basic educator rights (See Appendix A).



[7] AFT: *Teacher Quality and Tenure: AFT Teachers' Views.* Peter Hart, 1997.

# The Case for Peer Assistance and Review Programs

Kerchner, Koppich and Weeres (1997), in their book on "new unionism," comment on the importance of peer assistance and review programs for ensuring teacher quality and enhancing teacher professionalism. They indicate that the adoption of peer assistance and peer review programs changes the nature of traditional labor-management relationships.

> ... peer review brings higher standards to teaching. It significantly changes the conception of teaching work by recognizing the importance of engagement and commitment as well as skill and technique. It recognizes a legitimate role for teachers in establishing and enforcing standards in their own occupation. For unions, it represents both a radical departure from established industrial norms and a rediscovery of traditional craft and guild union functions. Under peer review, the union's role balances protection of individual teachers with the protection of teaching.[*]

Where the introduction of peer assistance and peer review programs necessitates changes in labor-management relationships, it can be controversial. This is particularly the case in locals dominated by a traditional industrial union model or in school districts where labor-management relations have been contentious.[†] For peer programs to be successful they must have the support both of the school administration and union members. Resistance may come from either of these groups if they are not properly educated about the program.

Some administrators and school board members are likely to worry aloud that "having teachers assist and evaluate other teachers is tantamount to putting the fox in the chicken coop." They are likely to be concerned that teachers will be too lenient with their colleagues. But the evidence to date points the other way. Peer mentors and intervenors impose far more rigorous standards on participating teachers than does traditional teacher evaluation, where principals spend very little time in the classrooms of teachers and often evaluation consists of a simple checklist of routine teacher behaviors.

Furthermore, administrators may sometimes resist the notion of teacher involvement in the evaluation process because they view such a role as exclusively theirs. Indeed, the principals' association in Rochester challenged the peer review program there, claiming that the evaluation of teachers was a job reserved for principals. But

[*] Kerchner, C.T., Koppich, J.E. and Weeres, J.G. *United Mind Workers: Representing Teaching in the Knowledge Society*. Jossey-Bass: San Francisco, 1997, p.87.

[†] However, Adam Urbanski, president of the Rochester Federation of Teachers, a local that has had a peer assistance and review program in place more than 10 years, likes to remind his fellow unionists that such programs "are only controversial where they haven't been implemented."

the challenge did not prevail. A court held that the school board had the responsibility to assure that teachers were evaluated and that the board had the discretion to assign that responsibility to a peer assistance and review program.[10]

Polls show that the majority of teachers support peer assistance programs, But teachers are divided on the desirability of peer review programs.

Opponents are likely to focus their concerns on:

- Favoritism. Some educators believe principals will handpick their most malleable teacher to be the peer reviewer.
- The "evaluator" role. Some are concerned that the "evaluator role" is rightfully reserved for principals and is inappropriate for teachers.
- Union membership. "Teacher evaluators," they believe, are supervisors and, as such, are not part of the local bargaining unit.
- Union responsibility. If teachers participate in the review of other teachers, some members feel the union's ability to provide duty-of -fair representation should a terminated teacher file a grievance will be compromised.

These are all common objections that must be answered and that can be overcome through education and discussion with members and by carefully designing a local peer assistance and review program that alleviates these concerns.

To address the concerns cited above, let us look at the track record of peer assistance and peer assistance and review programs.

### *Is the fox in the chicken coop, or do teachers actually demand high standards from the participating teachers with whom they work?*

The available evidence indicates that peer review programs are more effective than traditional evaluation methods in identifying new teachers who do not have sufficient skills to be granted tenure and in improving the practice of veteran teachers or counseling them out of the profession. For example, according to Kerchner et al. (1997):

> In the years that the Toledo internship program has been operating, approximately 6.4 percent of the new teachers resigned, were not renewed, or were terminated for inadequate performance. In the five years before the internship program began, when evaluation was done by administrators, only one new teacher was terminated. (p. 90)

There are a number of reasons why the standards are higher in these programs than those in traditional evaluation procedures. Teachers impose demanding standards on their peers because they know full well that they suffer the consequences of incompetent colleagues in immediate and demoralizing ways. First, to the extent that such poor performing teachers persist in the classroom, they diminish the reputation of the profession as a whole. And second, and most important, they must deal with the students of poor performing teachers who come into their classes unprepared as a result of past inadequate instruction.

In addition, the peer assistance and review programs ensure higher standards by the very manner in which the programs are structured.

- First, peer review systems are more thorough because peer-mentoring teachers are given the time and resources necessary to observe and work with participating teachers.



[10] *Carnahan* v. *McWalters*, et al., No 13722 (N.Y. Sup. Ct. June 18, 1987).

- Second, the standards for evaluation are explicit, and mentor teachers receive training in their meaning and representation in practice.
- Third, the mentor teachers are chosen through a rigorous application process that assures not only that they are excellent teachers but also that they are able to communicate their knowledge about best practice to others. For example, in Cincinnati, consulting teachers must first qualify as lead teachers, i.e., advanced practitioners on the negotiated teacher career ladder. This process includes peer assessment of their teaching.
- Fourth, the peer assistance and review program links teacher evaluation with professional development so that new and struggling teachers get help in the areas where they are weakest.
- Finally, all of these programs demand that mentor teachers document their work with participating teachers. When making recommendations, mentor teachers must have hard evidence that teachers meet, or do not meet, the standards articulated by the program.

### *Are the consulting teachers likely to be chosen by the principal and have limited credibility with the faculty?*

No. Peer review programs are all jointly administered by the local administration and the union. All involve elaborate application and selection processes. All include information from other teachers in the selection process. No single individual chooses the intervenors.

For example, the New York City peer assistance program lists the following criteria for a peer mentor:

- minimum of 10 years' experience under regular appointment in the New York City school system, including at least five years of classroom teaching;
- demonstrated outstanding classroom teaching ability;
- demonstrated knowledge of, and successful experience with, adult learners;
- exemplary knowledge and evidence of creativity and initiative with respect to curriculum content, materials and methods;
- knowledge of current research in educational methodology and the change process;
- demonstrated ability in oral and written communication; and
- background demonstrating ongoing use of effective interpersonal skills.[11]

Teachers interested in becoming a peer intervenor must submit a resume along with a letter of application and must solicit letters of reference from their building principal, their union chapter leader, and two other current staff members who are knowledgeable about the applicant's teaching skills. As part of the selection process, the applicant must demonstrate their teaching knowledge and written and oral communications skills through a role-play exercise, an "in-basket" assessment task, and an interview. The members of the Peer Intervention Policy Board are responsible for interviewing candidates, reviewing their material and making final selections of intervenors.

[11] See, *Teachers Not Making the Grade? How To Set Up a Peer Assistance Program.* New York City Peer Intervention Program, 1995, for more details on the criteria and selection process.

A review of selection procedures in other peer assistance and peer review programs show there is no evidence to support the expressed fears of peer assistance and review opponents that peer mentors would be chosen arbitrarily and without regard to their knowledge and skills as outstanding classroom teachers. Indeed, in designing the program, the union and the local district must spell out the process so as to prevent just such occurrences.

### *Are peer reviewers "supervisors" and, as such, no longer eligible to be a part of the bargaining unit?*

NEA prepared an analysis of potential legal concerns locals should consider as they develop peer assistance and review programs. This analysis, which is included as Appendix C, should be reviewed carefully by those locals seeking to create peer assistance and review programs. Of particular concern are the following: Does the performance of evaluative functions make a consulting teacher a "supervisor" within the meaning of the relevant state collective bargaining law? If so, could this lead to his or her exclusion from the teacher bargaining unit, and perhaps even from the coverage of the statute itself?

The analysis concludes that, even if the work of consulting teachers is deemed to be "supervisory" in nature, the consulting teacher does not have to be excluded from the teacher bargaining unit. It is essential that the relevant collective bargaining agreement (or program document that is a companion to the collective bargaining agreement) prohibit the school district from seeking to exclude a consulting teacher from the bargaining unit based upon his or her participation in a peer assistance and review program. Language to this effect is suggested on page C4 of Appendix C.

### *Does the union's obligation under duty of fair representation (DFR) allow it to develop and implement peer assistance and review programs and still meet its obligations to individual members?*

To answer this question, it is necessary to understand what DFR is and when it applies. DFR is a legal obligation that results from a union's authority to represent exclusively all members of a designated bargaining unit. In this sense, DFR is a condition the union must satisfy in exchange for the right of exclusive representation.[12]

- DFR is recognized in both the private and public sectors.
- DFR applies where a union is negotiating or administering a contract or processing grievances.
- DFR most commonly arises in the processing of grievances.

Some critics of peer assistance and review programs fear that, if the union participates in the review process and makes recommendations, for example, regarding termination of employment, the union will be unable to meet its DFR in representing a grievant who was the object of peer assistance and review. DFR does not, however, require the union to pursue every grievance that is presented. What is important is that the decision to support a grievance results from a rational, consistent procedure that applies equally to all members.

The NEA and the AFT vary strategically on the approaches they recommend for handling grievances arising out of peer assistance and review programs. The NEA's

[12] See Appendix C, *The NEA Peer Assistance and Review Resolution: A Legal Analysis*, 1997; and Appendix D, *AFT Questions and Answers on Duty of Fair Representation.*

analysis of DFR liability suggests that local unions decline to provide representation in all cases arising out of a peer assistance and review program on a uniform, non-discriminatory basis. This approach assumes that the underlying peer assistance and review program operates in a way that safeguards the employment rights of the participating teacher and that the consulting teacher acted responsibly and in good faith.[13] The AFT recommends that the local union follow the requisite procedures for deciding whether to process any other type of grievance arising under the collective bargaining agreement. These procedures include a good-faith investigation into the merits of each grievance.

The peer review programs operated by the Toledo Federation of Teachers and the Cincinnati Federation of Teachers, both AFT locals, provide classic examples of how unions can operate such programs and fulfill their DFR obligations. These unions set up separate systems—independent of their peer assistance and review programs—for reviewing grievances that arise from the peer review process. As with other grievances, the union

- investigates the merits of the grievance independently;
- makes its decision whether to represent the member *not* on the results of the peer review process but rather on the results of the *union's own investigation*, and
- makes a decision that is not arbitrary or capricious but based on union procedures and guidelines that apply to all cases equally.[14]

The overall purpose of the peer review process is to protect the entire membership, including those who participate in the program, by establishing a means to internally maintain high-quality teaching.[15] This goal is not in contradiction with the union's DFR. It just means that decisions regarding what, if any, grievances the union will pursue must be made fairly, implemented consistently and involve independent judgment of the union arm that makes the decision.

It is not the union's obligation under the DFR to take every grievance. Responsibilities to the profession as well as to individual members must be weighed in considering decisions to process grievances.

There do not appear to be insurmountable legal problems with the notion of peer assistance and peer review programs. The next section of this report considers the details that must be considered in setting up programs that meet professional and legal standards.

[13] For a fuller explanation of this approach to handling grievances arising out of peer assistance and review, see Appendix C, *The NEA Peer Assistance and Review Resolution: A Legal Analysis*, 1997.

[14] For more information on the legal aspects of duty of fair representation in regard to peer review and peer assistance programs, see, Strom, D. *Legal Protections for Teacher Employment: A Brief Overview*, AFT, 1997, Appendix E.

[15] Kerchner, *op. cit.*, p. 87.

# Details, Details, Details

Collaboration and support for peer assistance or peer assistance and review programs by both union members and the school administration are essential to the success of any peer assistance and review program. Peer programs should be carefully negotiated through the collective bargaining process, or developed through a joint local affiliate/school district agreement in non-bargaining states. The peer assistance and review programs created by the union and management should be included in the collective bargaining agreement, or in a separate memorandum of understanding. In either case, the critical features of the program should be legally binding on both parties and enforceable through the grievance procedure and arbitration clause of the collective bargaining agreement.

A non-bargaining local can establish a peer assistance and review program through a mutual agreement with the local school district. This agreement could be developed through a "joint development committee" composed of equal numbers from the local affiliate and the school district or be weighted in the union's favor.

Any peer assistance and review program developed by a joint development committee should be spelled out in a written "memorandum of understanding" and formally accepted by both parties. The school district should "adopt" the program as official board policy, since such an agreement legally may not be binding in some states that do not have bargaining laws.

While some locals have begun with peer assistance and review programs for new and veteran teachers, a local affiliate might consider phasing in, over time, any comprehensive peer assistance and review program. For example, a local might choose to implement peer assistance first, assess how well this assistance is working, and only then move on to adding a peer review element. Or the local could limit the peer assistance and review program to first-year teachers only. A phasing-in process allows the parties to uncover and deal with problems as they arise—and gives everyone involved time to develop support mechanisms.

As the brief descriptions of peer assistance and peer assistance and review programs in Appendix B reveal, there are diverse ways to construct peer assistance and review programs and many decisions that must be made along the way concerning:

- the purpose of the program—Is it assistance only? Is it assistance and review? Assistance for whom?
- the governing board—Who are the members? What are their responsibilities?
- the teachers who participate—new teachers? veteran teachers in trouble? Whatever the categories of teachers served, how are they identified? Is the program mandatory? Is the information regarding the intervention process and its effectiveness confidential?
- the consulting teachers—What are their qualification? What are their duties? How are they selected? How are they trained?
- how the program will be funded.

## Defining the Purpose

The purpose of a peer assistance or a peer assistance and review program needs to be clearly defined in the collective bargaining agreement or memorandum of understanding. In every school district there are excellent teachers, but there are also new and veteran teachers who are struggling, who know they need to improve but are virtually helpless to do so. Peer assistance and review programs, and some peer assistance programs, are often set up to help such teachers. Peer assistance programs are designed solely for the purpose of improving teaching, not terminating teachers. This point cannot be stated too often. The primary purpose of peer assistance and review programs is the improvement of teaching, although they are also designed to assist in removing teachers from the classroom where the provision of intensive, sustained assistance does not result in their becoming fully competent professionals.

## Governance

Peer assistance and review programs are *always* administered *jointly* by management and the local affiliate. These programs represent collaborations—partnerships between labor and management—whereby both parties agree to create and implement a teacher improvement program. This joint administration is absolutely critical. All peer assistance and review programs have a joint committee, sometimes called a "panel" or a "policy board," whose purpose is to develop, implement and evaluate the program.

Such joint committees define the policies and parameters of the program. Typically, they are empowered to:

- select, oversee, train and evaluate consulting teachers;
- determine the process for selecting participating teachers;
- review the reports and recommendations of consulting teachers;
- accept or reject consulting teacher recommendations;
- consider and act on appeals of participating teachers regarding the consulting process;
- make recommendations concerning teacher competence (and in some districts, continued employment) to the superintendent;
- monitor and evaluate the peer assistance and review program to determine its effectiveness; and
- ensure fair treatment for all participating teachers.

All key administrative details of a peer assistance and review program—especially the day-to-day management guidelines—need to be agreed to by the representatives of the local affiliate and the school district who serve on the joint committee.

The joint committee should be composed of both affiliate-appointed representatives and school district-appointed representatives. Usually these boards range from five to 10 people. The NEA Resolution on Peer Assistance and Review specifies that local affiliate-selected representatives should be at least equal in number to management representatives. In practice, this appears to be the case. The governing boards are usually made up of equal numbers of affiliate representatives and school district representatives, but in some instances the affiliate representation is greater.

The role of joint committee chairperson or presiding officer is critical and should be defined in the collective bargaining agreement or memorandum of understanding. This chairperson or presiding officer could be appointed by the union, the school administration, or the joint committee itself. Either party could be given the right to veto the other party's appointee. The chair could be rotated from meeting to meeting, or annually, between the affiliate and the school administration.

The frequency, time and place of joint committee meetings should be addressed in the joint committee guidelines, as well as the responsibility for calling meetings and ensuring fulfillment of basic administrative chores attendant to the meetings.

## Who Gets Assisted in Peer Programs?

The first issue that the joint committee must decide in developing a peer assistance and review program is who gets help. Two groups of teachers are generally candidates for peer assistance and review: the newly hired and those veteran teachers who are not performing satisfactorily. What considerations should a local take into account when deciding whether to focus initially on new teachers or veteran teachers experiencing serious teaching difficulties?

In existing peer assistance and review programs, well over 90 percent of participating teachers are new teachers. A local affiliate that decides to support a program only for first-year teachers will have a substantially larger number of program participants than a local that decides to begin a program only for veteran teachers in trouble.

From a program administration standpoint, a program with fewer numbers of participants might seem more "doable." On the other hand, a smaller program for veteran teachers in trouble is likely to be more controversial, at least in the early stages.

The Columbus, Ohio peer assistance and review program spent its first six months serving only veteran teachers in trouble. The rationale: The local wanted to fine-tune problems with the program while only a small number of individuals were participating in it. Once fine-tuned, the program began to serve all new teachers as well.

The Toledo Federation of Teachers had a different experience. Veteran teachers in trouble were only included in the joint program after the union spent 10 years unsuccessfully advocating for a peer assistance and review program for first-year teachers only. When the union agreed to include veteran teachers, the school district agree to adopt the program.

In light of current hiring needs, assistance programs for new teachers are likely to reach five to10 percent of a faculty in any given school year. Over a 10-year period, such programs could directly benefit about half of a school's faculty. Decisions abut whom to serve must be made by the local and the administration with due consideration given to the political and teacher support such programs can muster and the capacity of the district in terms of time, money and talent to implement the program.

Many programs for the newly hired require all beginning and teachers new to the district to participate. The struggling experienced teacher group presents a special challenge. Given that placement in the program means that the teacher's job is on the line, how should such teachers be identified?

There are a number of options for determining how deficient veteran teachers will be placed in a peer assistance and review program. What appears to be common in all programs that serve struggling, veteran teachers is at minimum a two-stage process, with multiple checks and balances to ensure against unwarranted referral into the program. In stage one, an experienced teacher is recommended for "intervention" by a supervisor or by other teaching personnel. That recommendation triggers stage two,

which generally involves screening the recommendation and making a decision as to whether the nominated teacher is in need of the program. Often, a consulting teacher is sent to the classroom to observe and speak with the nominated teacher. The consulting teacher then makes a recommendation to the governing committee as to the teacher's need for assistance.

Each stage can be handled in a variety of ways. For example:

- In Cincinnati, principals recommend teachers for intervention after two observations. A consulting teacher interviews the teachers, conducts additional observations, and makes a recommendation and report to a peer review panel composed of a teacher and a principal. The full panel then acts on the recommendation.
- In Rochester, intervention recommendations begin when a school principal and/or appropriate supervisor reports to the peer assistance panel that a tenured teacher is experiencing "serious" difficulty. The panel then reviews the recommendation and determines whether intervention is appropriate. Teachers accepted by the panel for intervention have the option of declining to participate.
- In Toledo, both the principal and the union building committee must concur that a teacher needs intervention. There is a multi-step process leading up to that joint recommendation. Because intervention is mandatory, once its appropriateness has been determined, teachers identified for peer assistance and review have the right to appeal the decision.

Whatever the nomination procedure, the process needs to incorporate checks and balances that prevent teachers form being inappropriately nominated and placed in a peer assistance and review program. The verification process is crucial to assuring the fairness of the program. Teachers can be having difficulties on the job that are unrelated to pedagogical issues. For example, they may be in the midst of personal crises, or they may be substance abusers. Such teachers, while clearly in need of help, are not candidates for peer assistance and review programs.

All teachers need to feel that the process functions fairly, without abuses. Without safeguards in place, no peer program will long enjoy teacher support, which is essential to sustaining a peer assistance and review program. How teachers are nominated and placed in a peer program can greatly influence this support, either positively or negatively. A local must ensure that adequate safeguards are in place.

Along with deciding which teachers a program will serve and how those teachers will be identified for assistance, those who develop the peer program must decide whether participation is mandatory and whether the information resulting from the assistance process is confidential—i.e., not usable in dismissal procedures. Programs vary in how they handle these matters. For example, Toledo and Cincinnati require teachers to participate and use the information from the process in dismissal hearings. In Rochester, participation is voluntary, but information about the success of the intervention may be used in dismissal proceedings. New York City's peer assistance program, on the other hand, is voluntary, and all intervenor documents, including the teacher's participation, are confidential and may not be subpoenaed or used in any way in the dismissal process.

For peer assistance and peer assistance and review programs that serve first-year, newly hired teachers, participation is generally mandatory. To deny the kind of high-quality, intensive assistance such programs provide to some new teachers could seriously disadvantage them relative to their peers and would be difficult to justify.

Where a veteran teacher is referred into a peer assistance and review program as a result of performance deficiencies, it is implicit that that person's job is on the line. Once a joint committee has reviewed the evidence and concluded that a referral into the program is appropriate, a program can either require that the veteran teacher enter the program or can leave that choice to the teacher.

In the latter case, the teacher must understand that if s/he declines to enter the program following a full review of the evidence by the joint committee, the school district may initiate dismissal proceedings, even though the teacher may be hindered by not having the benefit of the intensive peer assistance that s/he would have received had s/he chosen to enter the program.

It is essential that clear rules on allowable uses of documents, products and communications arising from a program be established and conveyed to all consulting and participating teachers. For example, in either a peer assistance or a peer assistance and review program, both the participating teacher and the consulting teacher must know at the outset whether verbal or written comments the participating teacher makes to the consulting teacher will be available to either the school district or the joint union/school district committee, as evidence in any dismissal proceedings.

## Who are Consulting Teachers?

The effectiveness of any peer assistance and review program rests on the expertise and credibility of the consulting teachers, sometimes called "cooperating teachers," "intervenors" or "mentors." As with the identification and placement of veteran participating teachers, the process of choosing consulting teachers must be rigorous and credible; one that teachers believe results in the selection of highly experienced, expert teachers.

As described earlier, peer assistance programs all have clear criteria that, at a minimum, require consulting teachers to

- have taught successfully for a specified number of years;
- be recognized as outstanding classroom teachers;
- demonstrate deep knowledge of the disciplines(s) they teach;
- possess a repertoire of effective classroom management strategies and instructional techniques;
- have strong verbal skills, both orally and in writing; and
- have the ability to work cooperatively and effectively with others.

The selection process for identifying such teachers typically requires documentation that they meet the criteria, letters of recommendation from teachers and supervisory staff, an interview process, and, in some instances, assessments. The joint governance committee makes the selection of consulting teachers.

The consulting teacher position is generally a full-time job. In most instances, it has a term limit—e.g., consulting teachers in Columbus serve for three years, Cincinnati's teachers for two years, and New York City's for four years. The joint committee should determine the term of appointment for consulting teachers. In setting this term, the committee ought to consider how the length of the appointment may affect the credibility of the consulting teacher. The longer consulting teachers are away from the frontlines of teaching, the less credible they may become.

Some peer assistance and review programs bar consulting teachers from accepting

administrative positions for a specific period after their term as consulting teacher expires. Provisions like these send a clear message to all teachers in a district that consulting teachers are their peers who will be returning to the classroom.

The joint committee also needs to consider how consulting teachers will return to their classroom assignment after the end of the consulting term. Will consulting teachers have the right to their old assignment? If so, for how long? If not, what reasonable assignment guarantees should they be accorded?

All peer programs offer training to their consulting teachers. This training not only orients them fully to the program, its policies and guidelines but also addresses and enhances skills regarding working with adults, documenting observations, deepening subject matter knowledge, and assuring up-to-date, research-based information on instruction and learning.

The duties of the consulting teachers vary according to the demands of the program. They may include such responsibilities as:

- determining the eligibility of veteran teachers recommended for the intervention program;
- helping to establish specific performance goals for participating teachers;
- helping to plan programs of intervention for participating teachers;
- observing and assessing their teaching performance;
- providing documentation on intervention and evaluation;
- making recommendations to the principal and to the peer review panel regarding participating teacher's performance; and
- making recommendations whether to declare intervention a success and cease work with a participating teacher, to recommend dismissal, or to continue the intervention process.

Given the demanding nature of the work and the expertise and training that is required, consulting teachers should be properly compensated for their services. The joint committee needs to develop guidelines that address consulting-teacher workload and compensation. This compensation may take various forms. It could be structured in the form of supplemental pay tied to a supplemental contract, as is the case in Columbus (20 percent above the base) and Rochester (10 percent above the base). It could be a flat addition to base pay as is the case in Cincinnati ($3,000 salary supplement). In any event, the compensation level should reflect the workload of the consulting teacher and provide a strong incentive for teachers to become consulting teachers. Both the structure and level of compensation need to be determined jointly by the local affiliate and the school district in conformity with collective bargaining agreements. This brings us now to the issue of costs for peer assistance and peer assistance and review programs.

## What Does a Peer Program Cost?

Peer assistance and review programs cost money, but they more than pay for themselves in regard to improved instruction, greater retention of new teachers, higher standards for continuing employment of new teachers, and nonadversarial terminations through resignation and counseling out of veterans who do not benefit from the intervention program.

What are some of the costs? The New York City Peer Intervention Program identifies the following costs that should be anticipated when setting up a program:

- Salaries of program coordinator, consulting teachers, clerical staff.
- Administrative costs to handle correspondence, plan meetings, provide support for the meetings and produce and distribute meeting minutes associated with the joint governance committee.
- Rent for headquarters, including office supplies and basic office equipment, postage, telephone lines, and computer online time.
- Development and printing costs for brochures, applications, participating teacher and consulting teacher handbooks.
- Ongoing training for consulting teachers, attendance at professional conferences (both local and out of town) and subscriptions to keep up with the latest research and literature.
- Car fare or "mileage" for consulting teachers for travel from site to site as they assist their participating teachers.
- Professional resource library, with material both for intervenors and for participants.
- Tape recorders, camcorders, cameras (including Polaroid) for work on classroom techniques with participants.[16]

It is crucial that such programs be adequately funded if they are to succeed.

[16] In its paper *Peer Assistance and Review Programs: Guide to Contract Language*, the NEA office of General Counsel identifies the following legal considerations: "...provisions of the relevant labor relations statute (and the interpretive caselaw dealing with scope of bargaining, supervisory and managerial status, and duty of fair representation, as well as any provisions in the education code of other statutes that mandate certain types of evaluation procedures, or that assign specific evaluative responsibilities to individuals with administrative/supervisory certification." (p. 70). That paper is attached here as Appendix F.

# Bargaining for Peer Programs

As we have indicated elsewhere in this document, there is general agreement as to the basic components of peer assistance and review programs—i.e., joint governing boards, rigorous selection and training procedures for consulting teachers, clear specifications as to the teachers to be served and how they will be identified. Nonetheless, there are numerous ways in which these components can be implemented. In developing an agreement with the district, the union must decide how much of the detail of the peer assistance program should be specified in the contract and what can be left to guidelines emanating from the joint governing committee. There is no pat answer to this question; local history, political and legal considerations all play a role.

The Columbus Education Association opted for parsimony in the contract—four paragraphs related to the peer assistance and review program—and referenced the procedures established by the joint governing panel. Those procedures are spelled out in a 12-page document that addresses in detail the structure and operation of the peer assistance program. Cincinnati's contract is somewhat more expansive and includes specifications regarding such matters as the number of consulting teachers, their caseload and their compensation. Still, most of the procedures governing the program are left to the discretion of the joint peer review panel. (See Appendix G for a copy of the Guidelines developed by the joint governance panel.)

New York City's peer assistance agreement specifies the number and composition of the governing board for the program and enumerates the panel's responsibilities. The contract also includes language about the intervenors—their term of office, but not their compensation, and describes the confidential nature of the program. The contract states:

> All communications between the intervenor and the participating teacher shall be completely confidential. As a condition of involvement in the program, all participants in the program, including the intervenor and the participating teacher, must consent to the confidentiality provisions set for them in this paragraph. The Board and the Union agree that the intervenor, or any other person involved in the peer intervention program shall not be subpoenaed by the Board or the Union or called to testify, produce documents or participate in any other way concerning the intervention in any proceeding involving the participating teacher, including potential subsequent proceedings under Section 3020-a of the education law. No arbitrator, in any proceeding under the parties' control, shall accept evidence regarding such communications.

Rochester's contract elaborates the procedures for identifying participating teachers. Furthermore, the contract spells out what happens should a participating teacher file a grievance in a dismissal case. In such an instance the contract specifies:

> If a unit member has been recommended by the Career-In-Teaching Panel for Intervention, and the Board of Education determines probable cause exists to discharge the unit member after the unit member either has refused to participate in Intervention and

> Remediation or the Panel's Final Report finds that the Intervention has not been successful, and the teacher then elects to contest the charges by submitting the matter to arbitration (Section 39.3), arbitration shall be before a panel consisting of the Superintendent of Schools, the RTA President, and a neutral third person familiar with the arbitral process selected by the Superintendent and the President. Arbitration shall be conducted in accordance with the provisions of CPLR Article 75, except that the cost, if any, for the services of the third person shall be borne equally by the parties.

Glenville Education Association has negotiated language that not only speaks to the issue of the use of the consulting teachers' reports but also directly addresses issues of legal liability:

> E. The Board shall hold harmless Consulting Teachers and Personnel Committee members [those identifying consulting teachers and specifying their duties] from any legal liability arising from the performance of their duties ...
>
> F. The content of any evaluation or observation report is not grievable.
>
> Failure to comply with a procedural step in this evaluation process shall not prevent the Board from placing a tenured teacher on remediation nor prevent the Board from releasing a probationary teacher.

Appendix H contains examples of contract language for some of the peer assistance programs currently in operation in districts across the country. It is clear that there is great variety in the subjects included in the contract. There are many ways to develop and implement these programs and to specify their purpose and operation. The contract, or some other document of agreement, in conjunction with the guidelines from the joint committee, taken as a whole, will reveal the scope and operation of these programs.

# APPENDIX A

# AFT and NEA Policy In Support of Peer Programs

The AFT Teacher Quality Resolution and the NEA Resolution D-8 on Peer Assistance and Peer Review, as well as D-9, Mentor Programs are appended here.

*Adopted at AFT Convention*
*July 19, 1998*

## THE UNION ROLE IN ASSURING TEACHER QUALITY

### The Context

The goals of American education are to assure that children of all races, religions, classes and national backgrounds master a demanding core curriculum and other material to prepare them to assume their civic and social responsibilities in a democratic society, to compete in the global economy, and to benefit from post-secondary educational opportunities. Rising expectations about what all students should know and be able to do, breakthroughs in research on how children learn, and the increasing diversity of the student population have expanded the knowledge and skills teachers must have to achieve these ambitious goals.

These new demands on student learning put increasing demands on teacher unions to assist in assuring that all children are taught by qualified, competent and committed teachers. The AFT believes that teacher quality is an essential union responsibility, and so do our members.

### The Teacher Development Continuum— A Need for Change

The quality of the teacher workforce is influenced by a number of factors, including, in particular: who is recruited into the teaching profession; the preparation recruits receive; the standards that are set for entry into the profession; the work environment of teachers; and the professional development available to them. A glance at the current process of teacher education, licensure and continuous professional development reveals a system in flux, generally devoid of high standards and in serious need of improvement.

***Preservice Preparation.*** For the past decade, teacher education has been subject to much scrutiny, and there have been continual calls for reform. Too often, a

four-year undergraduate education provides little time to educate prospective teachers deeply in both the discipline that they will teach and the knowledge and skills of the teaching craft that they will need to be successful. Furthermore, changes in student populations, changes in the workplace, new knowledge about how students learn, and the need to educate all students to high levels of achievement have all created a need for systemic changes in teacher preparation.

***Entry-Level Standards.*** In America, each state sets its own standards for teacher preservice preparation and licensure. In most instances, these standards are not very high. Until a decade or so ago, teacher licensure, with the exception of a few southern states, was based almost entirely on "seat diplomas." State departments defined licensure by the number of credits taken by teacher candidates in required subject areas. Although the vast majority of states now require that prospective teachers take an examination to demonstrate content mastery, these examinations are not sufficient to assure a teaching force with deep subject matter knowledge. Often the content assessed is unchallenging, and the standard used to declare that teachers have mastered the content is too low. Yet, in the face of rising student enrollments, even these low-level entry standards are frequently waived by districts frantically seeking to hire staff to fill classrooms.

***Induction Programs and the Granting of Tenure.*** If we look at countries with high-achieving school systems, we find that beginning teachers not only have solid liberal arts backgrounds, deep expertise in their subject areas, and sufficient education in pedagogy, but they also are inducted into the profession through a clinical, real-world training process. Inductees are able to develop and perfect their teaching skills by relying heavily on the expertise of their more experienced colleagues. As they become more expert, they assume more and more responsibility in the classroom.

By contrast, it is only in recent years, and in a few places, that anything resembling an induction system for new teachers has been put in place in the U.S. Induction is customarily a "sink-or-swim" event for the beginning teacher. New teachers get their teaching assignments, often including classes or students that more experienced teachers are glad to avoid, and they are told, "You're on your own."

Standards for granting tenure should be rigorous. Unfortunately, school districts are generally lax about initial assessments of teachers and often lack meaningful methods of teacher evaluation, as well as the personnel trained to do such evaluations.

***Continuing Professional Development.*** Compared to practices in American business and in other countries, most school districts in the U.S. invest inadequate sums in professional development. Furthermore, the dollars that are spent are generally invested unwisely. They are often spent on one-shot workshops, unconnected to the needs of students and teachers. For professional development to be effective, it must offer meaningful intellectual content; take explicit account of the various contexts of teaching and experiences of teachers; offer support for informed dissent; and be on-going and embedded in a meaningful way in the day-to-day work of teachers.

## The Union Role in Assuring Quality Teaching

To assure a high-quality teaching force, the union must play a role in developing and/or implementing quality preservice teacher education, effective recruiting and hiring practices, strong induction and mentoring programs, high-quality professional development, meaningful evaluation, and, when necessary, fair, timely intervention

and dismissal procedures. Many AFT affiliates around the country are doing just that.

***Preservice Programs.*** Teacher unions are taking an active role in working with policy makers and the higher education community to strengthen teacher preparation. They work to ensure quality by advocating, at the state and local levels, for policies and programs in regard to teacher development, licensure and continuing professional development. Teacher preparation must include a firm foundation in subject matter, a clinical, field-based approach to pedagogical knowledge and rigorous assessment of both.

***Hiring Practices.*** Setting high standards for teacher preparation and entry into the profession will be undermined if those standards are abrogated in the face of teacher shortages or ineffective teacher recruitment efforts at the district level. To assure teacher quality, unions must work with the administration to halt the practice of hiring uncertified staff and of assigning present staff to teach in areas for which they are uncredentialed. Unions around the country—for example, in Los Angeles, New York City, Rochester, N.Y., Cincinnati, Philadelphia, Seattle and Minneapolis—have bargained for rights to participate in the hiring process.

***Peer Assistance and Peer Review.*** In the early 1980s, teacher unions began collective bargaining for peer assistance and/or review programs. These programs address many of the weaknesses in the teacher development continuum identified earlier and speak to teachers' expressed desire that unions play a role in the improvement of teaching. These programs recognize a legitimate role for teachers in establishing and/or enforcing standards in their own profession. Programs to assist beginning or struggling teachers have been instituted in Toledo, Cincinnati and Cleveland, Ohio; New York City and Rochester, New York; Minneapolis, Minnesota; Pittsburgh and Philadelphia, Pennsylvania; Poway, California; the U.S. Virgin Islands and elsewhere.

These programs have much in common. First and foremost, they are all the product of collective bargaining agreements. In addition, they all:

- provide the union with at least an equal voice in the policies, practices and decisions involved in the implementation and evaluation of the program;
- provide assistance and/or review to new teachers and/or tenured teachers who are not performing at acceptable levels;
- have a process for identifying and training qualified teachers to provide peer assistance and/or review;
- have resources dedicated to implementing the program; and
- of particular importance, they all have safeguards to due process, should dismissal or other disciplinary action be necessary.

The programs vary in regard to: who is served; the extent and kinds of services provided; whether peer assistance is confidential; whether peer assistance is mandatory; whether mentors evaluate as well as assist teachers; whether it is permissible to use such evidence in subsequent disciplinary procedures; and, whether mentors make recommendations regarding termination or continued employment.

The widespread adoption of joint union-administration-directed peer intervention programs to help weak teachers gain the skills they need or, if that is not possible, counsel them into other lines of work, would do a great deal to raise the status of the profession. In addition, it would help reverse the public misperception that the union,

and its advocacy of due process and a fair tenure system, works to protect incompetent teachers.

***Tenure and Quality.*** While the public and AFT members agree that the overall quality of the teacher workforce is good, both believe that weak or incompetent teachers threaten the reputation of the profession and the quality of education children receive. Unfortunately, the existence of some failing teachers in our schools, and the exploitation of this situation by the media, some school boards and anti-teacher forces, has given the public the impression that tenure laws inherently protect and perpetuate poor teaching. The AFT believes such a conclusion is erroneous and distracts attention from the real reforms that must be undertaken.

One problem stems from the public's misunderstanding of tenure laws. For the education system to be effective, all teachers need a fair dismissal process, one that protects them from capricious, political and intemperate firing. Tenure laws do not guarantee life-time employment: They neither protect teachers against lay-off due to lack of work, nor prevent firing for incompetence or misconduct. They are designed to protect teachers from arbitrary dismissal without just cause or due process.

Where dismissal proceedings are time consuming, costly and inefficient, they need to be streamlined. In some states and districts, streamlined due-process safeguards have been legislated and/or negotiated to protect both teacher quality and individual rights.

Protecting tenure and assuring high standards of teacher quality are not mutually exclusive sectors of union endeavor. Just as teachers must be defended against unfair, unreasonable, arbitrary and capricious threats to their employment, so too must the efficacy of the profession be maintained. Peer assistance and/or review programs are designed to do just that. Peer assistance programs benefit teachers and the public by reducing the incidences of tenure cases through successful interventions or counseling out of the profession.

No one knows the difference between good teaching and poor teaching better than the best teachers themselves. Peer assistance and/or review programs allow teachers in trouble to be evaluated by people with expertise in their teaching field, to get help and to be observed over time, instead of the widespread evaluation practice of a single observation, usually by the principal or vice principal. Peer assistance and/or review programs provide a fairer and more comprehensive review system than most traditional teacher evaluation systems currently in use in school districts. Under peer assistance and/or review, the union balances the protection of individual teachers, the protection of the profession and the public interest.

But, some have questioned whether union involvement in peer evaluation programs, where teachers make judgments of other teachers, interferes with the union's responsibility to provide duty of fair representation to all of its members. This issue has been grappled with by affiliates involved in peer assistance and/or review. The union is not obligated, with regard to any issue, to take every grievance filed, nor is it obliged to contest every dismissal or disciplinary action taken against a teacher. As long as unions apply consistent, reasonable and fair principles and procedures for determining whether to contest a grievance, and as long as they make an independent investigation of the grievance, it is well within their authority to reject a poorly performing teacher's request for union assistance in a termination for poor performance case. For example, the Cincinnati Federation of Teachers meets its imperative to protect individual rights and the competence of the profession by operating two parallel structures. One arm of the union participates in and governs the peer review process,

another makes determinations about grievances including any that stem from the peer review process. Provided that no individual serves at the same time on both arms or that the union leadership does not arbitrarily weigh in on one side or the other, the union meets it obligation to members with regard to the duty of fair representation.

## Recommendations

The AFT believes it is the union's responsibility to work to improve teacher quality and enhance the teaching profession. Therefore, we urge teachers and their unions to:

- work with universities to assure that preservice programs for teachers have high standards for entry and exit, require rigorous preparation in pedagogy and the academic disciplines, and have strong clinical components that involve exemplary teachers both at the field sites and on the clinical faculty of education departments;
- work with universities and preservice institutions and the organizations representing them, such as the National Council for Accreditation of Teacher Education, to support the development of a stronger core curriculum in teacher preparation tied to the best research knowledge about effective practice;
- work with licensing bodies and professional standards boards to require that entering teachers meet high standards that include knowledge of their discipline, knowledge of how students learn and knowledge of the liberal arts and sciences as measured by valid and reliable assessments;
- work with legislators and local school district policy makers to assure that beginning teachers are given a well-supervised induction period, that all new teachers have the opportunity to observe and be observed and mentored by highly accomplished teachers; and that only teachers who meet professional standards are awarded tenure;
- work through the collective bargaining process to develop programs that promote and assure teacher quality, such as: 1. Peer assistance programs that provide mentoring to new teachers and provide assistance to tenured teachers whose teaching has been identified as in need of improvement. 2. Internship programs that enable master teachers to assist new teachers, review their practice and recommend whether the quality of their teaching merits their being awarded tenure. 3. Peer review programs that assure that teachers who are not performing competently are identified in a fair, noncapricious manner, have the opportunity to improve their practice with intense help provided by expert peers, receive competent, fair review by peers and, if unable to meet the standards of competence, are counseled out of the profession or otherwise terminated following due-process proceedings. 4. Other methods to help assure the quality of teaching;
- negotiate contract provisions and advocate state policies that encourage teachers to seek National Board for Professional Teaching Standards certification by offering financial incentives and preparation programs; and
- support state tenure statutes that provide strong due-process safeguards, with an efficient process that ensures the protection of both individual rights and high standards for the profession.

*Adopted at NEA*
*July 1997*

# D-8. PEER ASSISTANCE PROGRAMS AND PEER ASSISTANCE AND REVIEW PROGRAMS

The National Education Association believes that high standards within the teaching profession and continuous improvement in professional practice are cornerstones of the profession. Some local associations may conclude that, under certain circumstances, a peer assistance or a peer assistance and review program is an appropriate mechanism for achieving these objectives.

The primary purpose of any such program should be to provide "assistance"—to improve professional practice, retain promising teachers, and build professional knowledge to improve student success. A local association may, at its option, also decide to include a "review" component in the program—involving the evaluation of performance. If a local association takes either position, the program should—

a. Be developed through collective bargaining or through a joint association/school district agreement in non-bargaining states.

b. Be governed by a board composed of an equal number or a majority of representatives appointed by the local association.

c. Acknowledge that the school district makes the final decision to retain or seek non-renewal or termination, but that recommendations forwarded by the joint governing body are routinely accepted and acted upon by the district.

d. Ensure that only teachers who are deemed by their peers to be highly skilled practitioners are selected for the role of consulting teacher, that the consulting teacher's area of expertise is the same as or closely related to that of the participating teacher, and that the consulting teacher is chosen by the program governing bodies.

e. Seek consulting teachers who reflect the diverse population of the teaching staff.

f. Provide that consulting teachers are properly compensated and provided adequate time to fulfill their responsibilities.

g. Provide that consulting teachers receive extensive and ongoing training in mentoring/coaching skills, district initiatives and resources, and current education instructional methods.

h. Establish guidelines for the referral of teachers as well as safeguards to prevent unwarranted referrals and to allow participating teachers the selection and/or approval of their assignment to a consulting teacher.

i. Establish and convey to all consulting and participating teachers clear rules on allowable uses of documents, products, and communications arising from the program.

j. Require extensive documentation based on ongoing assessments of each participant.

k. Require that rigorous and extensive assistance be provided over an appropriate period of time to help the participating teacher attain the requisite standard of

proficiency before any effort is made to counsel the participating teacher into alternative career choices either within or outside the education profession or a recommendation to initiate non-renewal or termination proceedings is issued.

l. Ensure due process protection and duty of fair representation procedures.

m. Guarantee that participating teachers, consulting teachers, and teachers who sit on governing bodies do not lose their Association membership or bargaining unit status by virtue of their participation in the program. (97, 98)

*Adopted at NEA Convention,*
*July 1997*

## D-9. MENTOR PROGRAMS

The National Education Association believes that mentor programs are a means of enhancing the professional expertise of employees. The Association also believes that the planning, implementation, and evaluation of such programs must be negotiated or cooperatively developed and maintained by the school district and the local affiliate.

The Association further believes that the duties and responsibilities of all parties must be clearly defined and uniformly administered. Mentors must be selected through a defined process with articulated criteria, be properly trained and compensated, and be provided with adequate time to fulfill their responsibilities. The state or local authority has the obligation to provide hold-harmless protection.

The Association further believes that any documentation that results from the mentoring process must be confidential and the sole property of the person mentored, and must not be included in the participant's personnel file. (88, 97)

# APPENDIX B

# Peer Mentoring and/or Evaluation Programs

Below we briefly describe six peer assistance programs currently in operation in AFT or NEA locals.

## PROGRAM SUMMARIES

### Toledo

The Toledo Plan was established in 1981.

***Purpose:*** There are two purposes: to assist teachers who are new to the profession; and to intervene when teachers experience "difficulty in the performance of their professional classroom duties" unrelated to other factors such as substance abuse, absenteeism, etc.

***Teacher Participants:*** All probationary teachers (those hired for four consecutive semesters) are subject to peer evaluation that is not confidential. Participation for "interns" (first-year teachers) is mandatory, but is voluntary for second year teachers. The evaluations of all interns and second year teachers are filed with the office of personnel.

Intervention is designed to assist and evaluate non-probationary teachers who have been identified by a school staff as performing in a way so unsatisfactory that either termination or improvement is imperative. Assistance is not voluntary or self-initiated; it occurs when the building principal and the federation building committee both recommend professional assistance for the teacher. The teacher may appeal the decision that intervention is needed to an arbitrator who is a law professor at the University of Toledo law school. The arbitrator does not evaluate the teacher's performance, but does decide whether the intervention is the most appropriate remediation in the circumstances.

***Staff Intervenors:*** Staff intervenors, called "consulting teachers," are excellent teachers with five or more years experience. They must apply for the position. Excellent oral and written skills are required. Applications include letters of recommendation from the candidate's principal, federation building rep and three teacher colleagues.

Consulting teachers:

- discuss supervision, evaluation and goal setting with the teacher
- observe and assess teaching performance

- establish specific performance goals, per a "Performance Goals Form"
- allow the teacher time to follow through on goals agreed upon
- observe the teacher again (twice for interns, and once for second year teachers)
- hold conferences with the teacher (and principal) within five school days after an observation, at which time the principal will make a written summary of the observation
- complete "Summary Evaluation Form" using the performance goals established previously
- determine when an intervention is no longer necessary.

***Governing Panel:*** The governing panel, or "Intern Review Panel," consists of five appointees by the Toledo Federation of Teachers and four appointees by the Toledo Board of Education.

The panel

- hires the consulting teacher
- reviews the evaluations for interns and recommends "future employment or termination to the superintendent of schools"
- at the request of the intern's consulting teacher, approves of the choice of an outside peer to evaluate a teacher's content knowledge
- receives status reports from the consulting teachers regarding intervention efforts with non-probationary teachers in intervention.

***Relationship to Termination Decisions:*** The consulting teacher makes reports each semester to the Intern Review Panel. The consulting teacher decides when the intervention candidate has successfully met the standards that triggered the intervention, when more intervention might be useful, or when further intervention is uncalled for but the teacher is still not meeting the standards. The consulting teacher makes such a status report to the Review Panel. Management and the federation also receive this report.

Management may then decide to terminate a teacher. Information in the status report regarding lack of sufficient improvement may be used in making this decision. If the teacher to be terminated requests assistance from the union to challenge the termination decision, the following steps occur:

- the teacher files a grievance with the Toledo grievance committee
- the grievance committee reviews the facts and interviews both the consulting teacher and the claimant
- the grievance committee then makes a recommendation to the seven officers of the union regarding whether the union should provide support
- the seven person union reviews the case, including the materials from the grievance committee and takes a vote to decide whether to support the claimant.

The union was sued re failure to provide duty of fair representation by one claimant whom they chose not to represent. The union prevailed.

***Results:*** The Rand Corp., in 1984, recognized the Toledo plan as one of the four best teacher-evaluation programs in the country. More recently, the National Commission on Teaching and America's Future issued a report in 1996 praising the Toledo Plan.

About 10% of the new teachers are not rehired through this peer evaluation process as compared to about 1-2% not being rehired when this was solely a management function. Approximately one third of the teachers referred to intervention each year have left teaching by the end of the year through resignation, retirement or dismissal.

## Cincinnati

The Cincinnati Peer Assistance and Evaluation Program began in 1985.

***Purpose:*** The program has two purposes: induction, to assist teachers who are new to the Cincinnati system and intervention, to assist tenured teachers (three or more years of service in Cincinnati) who "exhibit serious teaching deficiencies."

***Teacher Participants:*** All beginning teachers are mentored and evaluated by consulting teachers. Principals recommend teachers for intervention based on serious deficiencies in teaching skills or practices, after two observations. A consulting teacher checks out the referral and makes a recommendation and report to the Peer Review Panel. Intervention participation is not voluntary, or self-initiated in Cincinnati. Nor is it confidential, in part, because all personnel files are public records in Ohio.

***Staff Intervenors:*** "Consulting teachers" are experienced, "lead teachers." These consulting teachers

- mentor and evaluate all teachers during their first year in the district
- determine the eligibility of teachers recommended for the intervention program
- plan programs of intervention for them
- evaluate the performance of the teachers with whom they are intervening
- make recommendations regarding that performance to the principal and to the peer review panel
- make recommendations whether to declare intervention a success and cease work with participating teacher; to recommend dismissal; or to continue the intervention process
- provide documentation on intervention and evaluation to participating teachers, the principal and the personnel office.
- serve a two year term.

***Governing Panel:*** The governing panel, called the Peer Review Panel, consists of ten members—five teachers and five administrators. The panel:

- selects, oversees, trains and evaluates consulting teachers
- determines the process for selecting participating teachers
- reviews the reports and recommendations of consulting teachers
- accepts or rejects consulting teacher recommendations

- considers and acts on appeals of participating teachers regarding consulting process
- makes recommendations concerning evaluation of teacher competence to the superintendent

***Relationship to Termination Decisions:*** The participating teacher may appeal the recommendation of the consulting teacher or the Peer Review Panel. Furthermore, "teachers appraised through Peer Assistance and Evaluation retain all rights afforded to them by the Collective Bargaining Contract between the Cincinnati Federation of Teachers and the Cincinnati Board of Education." This includes the right to file a grievance challenging the evaluation process or the decision to dismiss. However, the grievance must be supported by the union Grievance Committee before it can be submitted to arbitration.

***Results:*** Roughly one-third of the teachers referred to intervention each year have left teaching by the end of the year through resignation, retirement or dismissal. The other two-thirds improved their performances substantially. During the first five years of the program, 61% of teacher dismissals for performance reasons resulted from peer review, as compared with 39% from evaluation by administrators. Five percent of beginning teachers under peer review were dismissed, as compared with 1.6% of those evaluated by principals.

## Rochester, NY

The Rochester Career in Teaching (CIT) Program is a broad-reaching professional development program that began in 1988. CIT includes provisions from the Peer Assistance and Review (PAR) Program that ran from 1986-1988.

***Purpose:*** The program addresses professional improvement needs of three categories of teachers: new teachers, tenured teachers with serious performance problems, and tenured teachers who want additional help.

1. New teachers (interns), are assigned a Lead Teacher who is their mentor and evaluator. Participation is mandatory, granted there are enough lead teachers available.
2. Peer evaluation can occur in the form of intervention for tenured teachers who are experiencing "serious difficulties in performance of their professional responsibilities." Entry into intervention is voluntary for the teacher.
3. Tenured teachers are eligible for "Professional Support." Professional Support is a self-initiated and voluntary way for teachers to seek peer assistance and support. The evaluations of all teachers are kept confidentially in their CIT file.

***Teacher Participants:***

1. Interns are any "newly employed teachers with less than one year full-time teaching experience in their certification area in New York State."
2. Intervention recommendations begin when a school principal and/or appropriate supervisor reports to the CIT Panel that a tenured teacher is experiencing "serious" difficulty. The CIT panel then reviews the recommendation and determines whether intervention is appropriate. Teachers accepted by the panel for intervention have the option of declining to participate.
3. Tenured teachers seeking professional support must request participation.

***Staff Intervenors:*** There are two main types of staff intervenors: mentors

and intervention specialists.

There are three types of mentors: Lead Teacher as Mentor, School-Based Mentor, and Special Area Mentor. The Lead Teacher as Mentor is the traditional mentor, and has a caseload of four interns, or three interns and one intervention. School-Based Mentors provide assistance and support to one intern in their own school. Special Area Mentors provide support to one intern teacher in their certification area, but not necessarily in their school.

Mentors:

- are permanently certified and tenured teachers with at least seven years classroom experience who have been chosen through an application and interview process.
- assist and evaluate interns as well as teachers who volunteer to participate in intervention
- judge whether an intern should continue to be employed by the district
- report to the CIT Panel.

Intervention Specialists:

- are permanently certified and tenured teachers with at least ten years classroom experience who have been chosen through an application and interview process.
- direct the implementation of the CIT Panel's plans for assistance for teachers who choose to participate in intervention
- submit intervention status reports to the CIT panel twice each semester
- submit a final report at the end of the second full semester of intervention, or when intervention is terminated
- make judgments as to the success/failure of the intervention effort, and recommendations for continued or additional support to the CIT panel.

***Governing Panel:*** The governing panel, called the CIT Panel, is comprised of equal numbers of administrative members appointed by the Superintendent of Schools and teacher members appointed by the Rochester Teachers Association (RTA) President.

The Panel:

- assigns Lead Teachers
- reviews intervention status reports
- makes a recommendation for continuation or termination of an intern's employment to the Superintendent of Schools and the RTA President
- reviews and acts upon intervention recommendations
- determines the duration of intervention
- determines whether intervention was successful
- issues a written report to the Superintendent of Schools and the RTA President as to the success or failure of intervention.

***Relationship to Termination Decision:*** The participating teacher may respond to the CIT panel at the time of recommendation and/or attach a

response to the written report of the CIT panel. Participants also have access to the grievance process.

"Intervention has been incorporated into the revised due process guidelines for supervisors to follow in counseling, supervising and evaluating teachers whose performance does not meet district standards."

***Results:*** Most teachers in the intervention program improved. Ten percent of the 60 teachers assigned to the intervention program since 1988 have left the profession. In addition, more than 100 teachers per year have accessed Professional Support.

## New York City

The New York City Peer Intervention Program began in 1988.

***Purpose:*** To provide assistance on a voluntary, confidential basis to veteran, tenured teachers who "are in trouble in the classroom"—trouble is related to teaching competence, not to other factors —i.e., substance abuse, personal problems, absenteeism and the like.

***Teacher Participants:*** Tenured teachers make application for assistance, indicating instructional issues that they wish to have assistance with. Staff intervenors screen prospective applicants and decisions are made in concert with the panel as to whom to serve. Many teachers who apply have received unsatisfactory ratings from their principals or have been warned of possible formal proceedings.

***Staff Intervenors:*** Staff intervenors

- are experienced (at least 10 years), exemplary teachers who have been chosen through an elaborate process that includes formal application, letters of recommendation. role playing, "in-box" assessments and interviews.
- serve a four year renewable term
- provide assistance
- make no evaluative judgments
- receive special staff development re working with adults
- assist in counseling out teachers who agree with intervenor that a career change might be a good idea
- report to a nine member governing panel composed of six individuals nominated by the union and three nominated by the Chancellor.

***Governing Panel:*** The governing panel

- hires intervenors and other peer intervention staff
- designs programs
- evaluates the components of the program.

***Relationship to Termination Decisions:*** If intervention is unsuccessful, the participating teacher may accept counseling out services (during or after intervention process), or some other settlement, or reject intervenor advice. Principal may initiate dismissal procedures.

If teacher participant is subject to dismissal

- all intervenor documents, including teacher's participation are confidential and may not be subpoenaed or used in any way in the dismissal procedures.

- teacher participants who are involved in dismissal procedures "may exercise any constitutional, statutory, regulatory or contractual right otherwise provided by law, regulation or contract."

***Results:*** According to data collected for the 1995-1996 school year, 76% of teachers who participated in Peer Intervention Program (PIP) received "Satisfactory" ratings in the Spring of 1996—ten of whom were rated "Unsatisfactory." In contrast, only 47.5% of the teachers who were on a waiting list of PIP received "Satisfactory" ratings in Spring 1996. Many more of the unserved teachers were pressured into resigning or taking a leave of absence and ended up out of the classroom "serving time" at 110 Livingston Street while procedures relating to their dismissal inches along.

## Minneapolis

The Minneapolis Professional Development System was initiated in 1992, following several years of planning. By 1997, it is expected that all teachers will have an individual Professional Development Plan and a Professional Development Team for assistance in implementing the plan.

***Purpose:*** The peer assistance program is an extensive professional development plan that has three peer components: teacher assessment and improvement (Professional Development Plan Process—PDP, and Professional Support Process—PSP) and intervention for teachers with severe problems (Intensive Assistance Process).

***Teacher Participants:*** All Minneapolis teachers participate in the PDP which, beginning in July 1997 will be their right and responsibility by contract. Tenured and probationary teachers must develop a PDP plan each year, determining their own strategies. The teachers then select their own PDP Teams (including peer coaches, if so desired).

Only tenured teachers participate in the Professional Support Process. The PSP component offers help to two groups of teachers:

- one group of teachers is self-initiated and involves teachers who are interested in further development of new skills or in-depth assistance with skills that they would like to strengthen.

- the second group consists or teachers who have been recommended to the process by their team because they are experiencing difficulty in meeting overall performance requirements. Tenured teachers who are not successful during the PSP receive Intensive Assistance that typically lasts three to six weeks.

PSP is confidential and is available for both tenured and non-tenured teachers. Intensive Assistance is only for tenured teachers.

***Staff Intervenors:*** There is no particular individual responsible for peer evaluation, but rather a panel, or "Team."

***Governing Panel:*** Rather than one person being responsible for peer intervention, a PDP or PSP Team of 4-6 individuals is formed.

PDP Teams:

- include the teacher and the principal, and anyone else the teacher feels would be helpful (parents, peers, student, friend, community member, etc.).

- review the PDP

- establish meeting and provides critical feedback to teacher
- sign off on plan/program report
- keep their efforts confidential, unless the team agrees it can be shared with others
- review probationary teachers three times a year
- assess success or failure to reach PDP Plan goals, and make recommendations for PSP
- submit progress reports to school, keeps one copy and the school sends one copy to Human Resources Department.

PSP Teams:

- include the principal, the teacher, any member of the PDP team a Career-In-Teaching mentor (if requested by a team member), and other resource people deemed necessary
- write a support plan for PSP teachers that includes Professional Support Goals (PSG) that focuses on the areas where improvement is needed
- submit copies of the PSP Plan to the teacher, the school office and the Human Resources Department
- meet regularly to assess the teacher's possible growth or determine lack of improvement
- at the end of the pre-determined time-line, the PSP Team decides whether the teacher has improved and may continue with the PDP plan, or if the teacher has not improved, recommends Career Transition/Outplacement or Intensive Assistance.

***Relationship to Termination Decisions:*** PSP teams can recommend outplacement, which may lead to a voluntary job change, either internally or externally. Career Options Services can assist with this transition.

***District Support:*** To assist schools with the inservicing, implementation, and assessment of PDP/PSP/IA, a cadre of teacher leaders has been formed. This cadre includes: a Professional Development Facilitator, two Professional Support Mentors, two Intensive Assistance psychologists, a Lead Mentor from the Career-In-Teaching Program, a Career Options Coordinator and a Professional Development Advisory Committee.

***Results:*** During the first five years of implementation within the district, 3,000 of the 4,000 teachers voluntarily stepped forward to participate in the PDP.

## Columbus

The Columbus Peer Assistance and Review (PAR) Program began in 1986.

***Purpose:*** To provide mandatory assistance to newly-hired teachers and to experienced teachers "who are having serious difficulties in the performance of their professional classroom duties."

***Teacher Participants:*** All newly-hired teachers who haven not previously participated in the PAR program are designated "interns," and will be evaluated by a consulting teacher. Experienced teachers must be "recommended" for intervention by a principal and/or a senior faculty member. Staff intervenors are assigned by the PAR Panel.

***Staff Intervenors:*** Staff intervenors, called "PAR Consultants:"

- Have taught in Columbus Public Schools for a minimum of five years and must fill out an application and supply four references
- Serve on a full-time basis for a maximum of three years
- Mentor colleagues through conferences, demonstrations, observations, and providing assistance
- Plan and present new-teacher orientation
- Conduct new teacher workshops
- Determine when experienced teachers no longer need assistance or when assistance will be productive
- Evaluate colleague performance and make recommendations to the PAR Panel regarding future employment
- Receive supplemental contract worth 20% of base salary.

***Governing Panel:*** The Governing Panel, or PAR Panel:

- Consists of seven members: four appointed by the Columbus Education Association and three appointed by the Superintendent of the Columbus Public Schools
- Selects consulting teachers
- Meets with PAR consultants periodically to receive reports
- Makes personnel recommendations bases on PAR Consultant's reports
- Oversees PAR Consultant training.

***Relationship to Tenure Decisions:*** "The contractual and legal rights of intern teachers and experienced teachers assigned to the PAR Program for intervention are honored."

***Results:*** The national retention rate for new teachers is 50 percent but in Columbus, where teachers go through the intern program, the retention rate after five years is 80% During its 12 year implementation, Columbus has mentored 3,312 interns. Seventy-seven resigned before the evaluation was complete and an additional 91 were nonrenewed. The intervention program has served 178 teachers, 44 percent of whom were released in good standing, another 12 percent resigned, and 30 percent retired.

# APPENDIX C

# The NEA Peer Assistance and Review Resolution: A Legal Analysis

## I. INTRODUCTION

The 1997 NEA Representative Assembly adopted Resolution New D (Peer Assistance and Review programs), a copy of which is found in Appendix A of this handbook. During the Representative Assembly debate, several questions were asked regarding potential legal problems that might be involved in the type of program envisioned by Resolution New D. Specifically, these questions related to the peer review aspect of the program, which calls upon rank-and-file teachers (i.e., those persons who are not employed as principals, assistant principals, or in other traditional supervisory positions) to participate in the evaluation of the job performance of other rank-and-file teachers. (In order to reflect this focus, we will in this memorandum use the term "peer review program.") The NEA General Counsel responded to these questions, and several requests have been made for a written copy of the information that he provided. That information is set forth (in more orderly and expanded fashion) in this memorandum.

## II. DISCUSSION

From a local association's point of view, there are two principal areas of potential legal concern in a peer review program. One concern is that the performance of evaluative functions could make a consulting teacher or a teacher member of the joint governing body a "supervisory" employee within the meaning of the controlling labor relations statute, and that this in turn could result in his or her exclusion from the teacher bargaining unit, and perhaps even from the coverage of the statute itself. (The legal analysis is the same with regard to a consulting teacher and a teacher member of the joint governing body; for purposes of simplicity in discussion, we use the term "consulting teacher" in this memorandum to refer to both.) The other concern is with the duty of fair representation ("DFR") that a local association which is recognized as an exclusive collective bargaining representative owes to the bargaining unit teachers who are involved in the peer review program, including both participating teachers who are subjected to an adverse employment action, and consulting teachers who are

named by participating teachers in challenges to adverse employment actions.

Before turning to the foregoing concerns, two preliminary comments are appropriate:

A. Because both bargaining unit status and the DFR are elements of a collective bargaining arrangement, they are by definition of direct relevance only to local associations in jurisdictions that have a statute authorizing collective bargaining in public education. It should not be assumed, however, that a peer review program poses no potential legal concerns in non-collective bargaining jurisdictions. Any local association that is involved in such a program, and individual association members who function as consulting teachers, potentially may be subject to civil liability claims under the common law and a host of federal and state statutes by a participating teacher against whom an adverse employment action is taken. These include claims of unlawful racial or gender discrimination, defamation for critical comments made about a teacher, interference with contractual relations, and violation of constitutional rights for actions allegedly taken without affording a teacher the requisite due process or in retaliation for a teacher's exercise of protected First Amendment rights.[1] A detailed discussion of the various legal theories underlying such claims is beyond the scope of this memorandum. Suffice it to say that, although participation in any decisionmaking process that adversely affects a teacher's employment puts a local association and individual association members at risk of being sued, there is little likelihood that liability will be found if they act in good faith and render decisions based on their best professional judgment.

B. We discuss in this memorandum the problems that peer review programs pose for local associations and individual teachers in the bargaining unit—more specifically, the questions of bargaining unit status and DFR—but these programs also put school districts at risk. In any lawsuit involving alleged unlawful employment discrimination, defamation, violation of constitutional rights, etc., the school district presumably would be named as a primary defendant.[2] Moreover, to the extent that a board of education merely "rubberstamps" non-renewal or termination recommendations made by a "board composed of an equal number or a majority of representatives appointed by the local association," Resolution New D, principle (b), the board of education may be subject to a charge of improper delegation of its statutory responsibility. See Resolution New D, principle (c) ("recommendations forwarded by the joint governing body are routinely accepted and acted upon by the district.")

We turn now to the two primary legal concerns about peer review programs that were expressed during the Representative Assembly debate—dealing in turn with bargaining unit status (Section A) and the DFR (Section B).

## A. Bargaining Unit Status

The question of bargaining unit status is addressed in Resolution New D, principle (m), which provides as follows:

> Guarantee that participating teachers, consulting teachers, and teachers who sit on governing bodies do not lose their Association membership or bargaining unit status by virtue of their participation in the program.

As written, this is not a statement of law, but rather a policy position, *i.e.*, NEA

[1] Illustrative is the case of *Featherstone v. Columbus Public Schools, et al.*, which now is pending in the United States District Court for the Southern District of Ohio, and which includes the Columbus Education Association and its president among the defendants. The plaintiff in this case is a teacher in the Columbus Public Schools who was subjected to an adverse employment action after his participation in the School District/Columbus Education Association Peer Assistance and review Program. In addition to alleging a DFR violation (Ohio is a collective bargaining state), the lawsuit advances many of the claims referenced in text.

[2] *See, Featherstone v. Columbus Public Schools, et al.*, discussed in footnote 1, *supra*.

advises local associations not to become involved in a peer review program unless, among other things, "bargaining unit status" is preserved. The dispositive question is whether this result can be achieved under the type of peer review program envisioned by Resolution New D. Before explaining why the answer to this question is "yes," it is appropriate to deal with several ancillary points that are raised by principle (m).

The reference in principle (m) to "participating teachers" is extraneous. The concerns that inform that principle derive from the evaluative functions that are performed by consulting teachers, and there is nothing in a peer review program that would call into question the bargaining unit status of participating teachers.

The other point involves the reference in principle (m) to continued eligibility for "Association membership," a concern which again presumably derives from the evaluative functions performed by consulting teachers. We are aware of no general legal proposition that would prohibit a consulting teacher—whether he or she is included in or excluded from the teacher bargaining unit—from retaining his or her association membership.

It has been suggested, however, that a consulting teacher might be ineligible for membership in an association that is not "all-inclusive"—*i.e.*, that does not include supervisors. But any concern on this score is unfounded. Within certain broad limits of rationality and non-discrimination, associations are free to interpret their own governing document as they see fit, and it would be rather perverse to adopt a construction that precludes teachers from association membership because they participate in a program that is developed and implemented by the association.

This brings us to the heart of the matter—*i.e.*, the bargaining unit status of consulting teachers. The appropriate starting point is to consider whether and under what circumstances a consulting teacher in a peer review program of the type envisioned by Resolution new D would be classified as a "supervisor" for legal purposes.

The National Labor Relations Act ("NLRA"), which governs labor relations in the private sector, defines a "supervisor" as follows:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. § 152(11).

In applying this definition, the National Labor Relations Board ("NLRB") has focused on an employee's actual authority, rather than on his or her title or job description. The definition does not require an employee to have final authority, but only the authority "effectively to recommend," which is satisfied if the ultimate decisionmaker generally follows or relies heavily upon the recommendations. Moreover, consistent with the use of the word "or," the definition has been interpreted disjunctively, so that an employee need only have authority in one of the enumerated areas in order to be classified as a supervisor. Finally, a person who exercises the requisite authority to any significant extent generally is deemed to be a supervisor, even if he or she spends the bulk of his or her time doing rank-and-file work. In effect, the definition is intended to target those employees who serve as representatives of the employer's interests with respect to the workforce, and who are, in that sense, aligned with management.

Although there are some exceptions, most public sector collective bargaining statutes establish a supervisor classification, and use a definition that is the same as, or

similar to, that in the NLRA.[3] State courts and administrative agencies likewise have looked to private sector precedents in applying the definition. Whether a consulting teacher in any particular peer review program would constitute a statutory supervisor would depend on the precise definition in the relevant statute, and the specific nature of the program in question. For present purposes, however, we will assume that consulting teachers in fact would be classified as supervisors, and consider what that classification means vis-à-vis their bargaining unit status.

Under the NLRA, a supervisor has no protected right to join or assist a labor organization or to bargain collectively. A private sector employer can, if it chooses, discharge a supervisor for union activity. By the same token, the NLRA does not prohibit an employer from voluntarily recognizing a union as the collective bargaining representative for a unit that includes both rank-and-file and supervisory employees, or a separate unit that is comprised entirely of supervisory employees.[4]

Approximately 15 states follow the NLRA approach in this regard, and their public sector collective bargaining statutes exclude supervisors from the coverage of the statute. The remaining states—some 25 in number—include supervisors within the protection of the statute, but the statutes differ in terms of their bargaining unit status. A few provide that supervisors must be in separate bargaining units, while others leave the question of a supervisor's unit placement to administrative determination. Finally, some public sector collective bargaining statutes—although relatively few—permit truly mixed units of supervisory and non-supervisory employees.

It is important to emphasize that the above discussion indicates the bargaining unit arrangements that an employer or a union may insist upon under a particular public sector collective bargaining statute. What this means in practical terms is that an administrative agency will not, *over the objection of a party*, certify a union as the representative for a unit that is inconsistent with the statutory pattern. As in the private sector, however, there is, to our knowledge, nothing in any public sector collective bargaining statute that would prevent a school district from voluntarily recognizing a local association as the exclusive representative for a unit that includes both rank-and-file teachers and teachers who might under the statutory definition be deemed to constitute supervisors.

To the extent that a local association wishes to be sure that teachers in a peer

[3] Illustrative of the exceptions to the general rule is Alaska. The Alaska Public Employment Relations at, Alaska Stat. 23.40.070 *et seq.*, which covers, among other things, faculty at public colleges and universities, does not make any special provision for supervisors. Moreover, even in those states that have enacted statutes with a supervisor classification, it is necessary to examine the definition carefully, inasmuch as seemingly minor differences in language may have significant effect. By way of illustration, the definition of a "supervisor' in the Illinois Education Labor Relations Act appears at first glance to be similar to that in the NLRA, but it has two differences that significantly limit the reach of the exclusion. The Illinois statute does not include the power "to direct" work as a basis for finding supervisory status, and expressly provides that "[t]he term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising [supervisory] authority." Ill. Rev. Stat. Ch. 48 §1701 (1984).

[4] The relevant statutory provision is 29 U.S.C. §164(a), which provides that:
*Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.*
In certain crafts (*e.g.*, the printing and building trades), where supervisors historically have been members of unions of non-supervisory employees, employers often have voluntarily recognized the union as the representative of a mixed bargaining unit rather than upset an existing arrangement.

review program are not excluded from the teacher bargaining unit, it could propose that a provision such as the following be included in the collective bargaining agreement (or in the agreement establishing the peer review program if a separate document):

> The School District agrees that it will not seek to exclude any employee from the bargaining unit based upon his or her participation in the [insert official name of peer review program], nor will it rely on such participation to in any way alter the structure of the bargaining unit.

We believe that this provision would be fully enforceable. And if a school district refused to agree to such a provision, it is unlikely that the "circumstances," *see* Resolution New D, are such as to warrant development and implementation of a peer review program.

In the Representative Assembly debate over Resolution New D, reference was made to the 1980 decision of the United States Supreme Court in *National Labor Relations Board v. Yeshiva*, 444 U.S. 672 (1980) *("Yeshiva")*. In this case, faculty at Yeshiva University, which is a private institution, were excluded from the coverage of the NLRA as "managerial" employees because of their participation in faculty committees which made recommendations as to curriculum, grading, policy, student admissions and matriculation standards, etc. Although *Yeshiva* involved a construction of the NLRA (and is thus by its terms confined to the private sector), and dealt with managerial as opposed to supervisory employees, it was suggested that the Court's reasoning might provide a basis for excluding consulting teachers from a teacher bargaining unit. We disagree: for the reasons explained below, *Yeshiva* is of no present relevance.

In addition to supervisors and certain other categories who are expressly excluded from the NLRA's definition of "employee," the NLRB, as a matter of policy, excludes as "managerial" employees those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *Palace Laundry Dry Cleaning Corp.*, 75 N.L.R.B. 320, 323 n.4 (1947). The importance of the managerial exclusion dramatically increased in 1980 as a result of *Yeshiva*. When the Yeshiva University Faculty Association ("YUFA") sought to represent in collective bargaining a unit consisting of full-time faculty, the University contended that the faculty were managerial. The NLRB disagreed and, following an election in which YUFA was successful, ordered the University to bargain. The University refused, and the United States Second Circuit Court of Appeals denied enforcement of the NLRB's order. The Supreme Court affirmed, agreeing with the Second Circuit that the Yeshiva faculty "'in effect, substantially and pervasively operate[e] the enterprise'." *NLRB v. Yeshiva University*, 444 U.S. 672, 691 (1980).[5]

It is against this legal backdrop that we now consider whether and to what extent *Yeshiva* has relevance to the bargaining unit status of consulting teachers in a peer review program. The first point to note is that *Yeshiva* is a private sector case based on the legislative history of the NLRA, and neither the Court's holding nor reasoning are, in any sense, controlling precedent in the public sector. Indeed, efforts to achieve a *Yeshiva* result even in public sector higher education, much less at the elementary/secondary level, have uniformly been unsuccessful. *Yeshiva* is, moreover,

[5] This finding was based on the record in the case, and the Court emphasized that it was "certainly...not suggesting an application of the managerial exclusion that would sweep all professionals outside the Act in derogation of Congress' expressed intent to protect them." *Id.* at 690.

concerned with managerial as opposed to supervisory employees, and the Court's reasoning even on its own terms has limited applicability in the later context. Finally, the issue arose in *Yeshiva* only because the University was hostile to collective bargaining, and relied on the managerial exclusion in order to avoid recognizing YUFA as a collective bargaining representative. As Resolution New D indicates, a local association would be ill-advised in such circumstances to attempt to develop and implement a peer review program.[6]

## B. Duty of Fair Representation (DFR)

In connection with a peer review program, the DFR must be considered in two contexts: (1) the obligation of a local association to provide representation for a participating teacher who seeks to challenge an adverse employment action, and (2) the obligation of a local association to provide representation for a consulting teacher if a participating teacher claims that the former was responsible for an adverse employment action, or that some other action taken by the consulting teacher damaged him or her. Although this is the most problematical of the potential legal issues involved in a peer review program, it is not triggered by Resolution New D. This is because the Resolution by its terms takes no position on whether and under what circumstances a local association should provide such representational services. To the contrary, principle (l) cautions the local association to "[e]nsure due process protection and duty of fair representation procedures," which we construe to mean "consult your local attorney" to avoid a problem in this regard. In order to address the concerns that have been expressed regarding the DFR, however, we move beyond the terms of Resolution New D itself, and discuss briefly the nature and application of the DFR.

Starting once again with the NLRA, a private sector union is as a general matter free to determine the policies it will follow in representing bargaining unit employees; but the DFR obligates it to at least represent each such employee fairly and without hostile discrimination. As the Supreme Court explained:

> [T]he exclusive agent's statutory authority to represent all members of a designated unit includes a[n] ... obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

Because the DFR is cast in rather broad terms—*e.g.*, "good faith," "arbitrary conduct," etc.—cases often turn on subjective assessments of union motives and attitudes.

[6] One related problem bears mention in regard to the functions that are performed by consulting teachers. There are statutes in some jurisdictions that assign specific evaluative responsibilities to individuals with administrative/supervisory certification. Illustrative is New Jersey, in which state law requires nontenured teachers to be evaluated by a "certified supervisor." If improvement is needed, then an "individual professional improvement plan" must be developed by the "supervisor" and the teacher. N.J.A.C. 6:3-4.3(a),(f)3, and (h)1. Similarly, in Pennsylvania, before a teacher can be dismissed for "incompetency or unsatisfactory teaching performance," he or she first must be "rated" by the school superintendent, assistant superintendent, supervisor, or principal. 24 P.S. § 11-1123.
The interplay between statutes of this type and peer review programs is by no means clear. For example, would a statutorily-mandated evaluation procedure be deemed to "occupy the field," and prevent a side-by-side peer review program? If not, to what extent would the statute limit the pool of employees who could serve as consulting teachers? Answers to these and similar questions cannot be given in the abstract, but would depend on the specific nature of the peer review program in question, the precise language of the statute, and how the statute has been interpreted—which provides support for the general proposition that a local association should consult with its own attorney before moving forward.

Certain rules are clear, however. A union itself may judge the validity of grievances, and need not process a grievance when it believes that the action of an employer was justified. Indeed, a union properly may refrain from pursuing even meritorious grievances, so long as the factors that it relies on in making this determination are reasonable (*e.g.*, available resources, competing interests of other bargaining unit employees). On the other hand, union actions based on discriminatory motives, on whether or not the employee involved is a member of the union, on whether he or she is popular or unpopular with a particular faction within the union, etc., would not pass muster.

As indicated, the DFR was developed in the private sector as a necessary corollary to the concept of exclusive recognition. Exclusive recognition is also the cornerstone of public sector labor relations, and to our knowledge every jurisdiction—by statute or case law—imposes a DFR on the exclusive representative. In applying the DFR, the public sector has relied essentially on NLRA precedent, and we are aware of no significant differences between the public and private sectors in this regard.

The first question posed in the present context is whether and under what circumstances a local association could refuse to represent a participating teacher who is subject to an adverse employment action as the result of a recommendation processed through a peer review program such as that envisioned in Resolution New D. Although not entirely free from doubt, we believe that, consistent with its DFR, a local association could deny representation in all such cases on a uniform, non-discriminatory, basis. It is important to emphasize, however, that the foregoing conclusion assumes that the peer review program has operated in the individual case in accordance with Resolution New D, that the participating teacher has been accorded all of the requisite safeguards, and that the consulting teacher has acted responsibly and in good faith. Indeed, this assumption would be relevant not only with regard to the local association's DFR, but it would in addition be relevant to the caution in principle (l) of Resolution New D that the peer review program "[e]nsure due process protection."

A local association, on the other hand, could opt to provide representation for participating teachers in some or all cases. But this position implicates certain other considerations. To begin with, a local association that makes representational decisions on a case-by-case basis—rather than pursuant to an across-the-board policy of denying (or providing) representation in all cases —- may be more susceptible to DFR claims. In response to such claims, a local association would have to demonstrate the rationality and good faith of each decision not to provide representation on the basis of a particular factual record.

Moreover, to the extent that a local association has confidence in the integrity of the peer review program, it should feel both legally and organizationally secure in refusing to represent participating teachers who seek to challenge adverse employment actions that emerge from the program. Providing such representation tends to suggest at least some uncertainty on the part of a local association in this regard.

Finally, if a consulting teacher is included in the challenge, a local association would be representing a participating teacher against someone who in effect was functioning as an agent of the local association. And if the local association decides to provide representation for consulting teachers (see discussion *infra*), it could find itself on both sides of the issue.

A similar legal analysis applies with regard to a local association's DFR obligation to represent a consulting teacher against a claim by a participating teacher that he or she contributed to an adverse employment action. Once again, it is our view that,

without violating its DFR, a local association categorically could refuse to represent members of the bargaining unit for actions taken while acting in supervisory positions —i.e., as consulting teachers. (In conjunction with this position, a local association should attempt, through collective bargaining or otherwise, to have the school district provide bargaining unit members with appropriate protection for actions taken by them while performing functions as employer representatives.)

Although a local association probably could take the above position without encountering any DFR difficulties, the position could be politically problematic. If a consulting teacher acted in good faith and rendered decisions on the basis of his or her best professional judgment, a local association would seem hard-pressed to deny representation to the consulting teacher if he or she is sued for actions taken while he or she was participating in a local association program.

A related question that arose during the Representative Assembly debate on Resolution New D is whether NEA's Educators Employment Liability ("EEL") Program would provide coverage for a consulting teacher who is the subject of a claim by a participating teacher. Because, prior to the adoption of Resolution New D, NEA categorically was opposed to peer review programs at the elementary/secondary school level, NEA could not as a matter of policy include such coverage in the NEA-funded national EEL Program.[7]

In order to accommodate certain NEA affiliates that were involved in peer review programs at the elementary/secondary school level, NEA arranged with the EEL Program insurance carrier to offer a K-12 Peer Review Coverage Option ("Option") to interested state associations, at state association expense. The Option became available beginning with the 1996-97 membership year, and was purchased by five state associations. As of June 17, 1997, nine state associations had purchased the Option for the 1997-98 membership year (Arkansas, Iowa, Michigan, Minnesota, Missouri, New Hampshire, Ohio, South Carolina, and Wyoming). It is, of course, possible that the adoption of Resolution New D will prompt other state associations to purchase the Option, but this has not happened as of the date of this memorandum. The per member premium for the Option varies from state-to-state, depending on the loss experience in that state with regard to basic EEL Program coverage, and the statutory obligation of school districts to provide liability coverage for teachers. For the 1997-98 membership year, the rate ranges from a baseline premium of 15¢ per eligible member (i.e., 15¢ x total Active, ESP, Active Life, Retired Life, Student, and Substitute members, and agency fee payers) to a maximum premium of 20¢ per eligible member.

[7] Since 1984, the EEL Program, at NEA expense, has provided coverage for members who perform evaluative functions in a college or university peer review program. This coverage has been consistent with NEA's traditional support for peer review programs in higher education.

## III. CONCLUSION

Peer review programs of the type envisioned by Resolution New D are on-going in various school districts throughout the country, with the most prominent programs in Columbus, Ohio (involving the NEA-affiliated Columbus Education Association), Rochester, New York (involving the AFT-affiliated Rochester Teachers Association), and Toledo, Ohio (involving the AFT-affiliated Toledo Federation of Teachers). We are not aware of any court decision specifically sustaining the Columbus, Rochester, or Toledo program on its merits. But the fact that these programs have been in operation for extended periods apparently without encountering any significant legal difficulty* does at least tend to buttress—albeit by no means conclusively—our belief that a local association can become involved in a peer review program of the type envisioned by Resolution New D without undue concern about its DFR or other liability.

We conclude our legal analysis with the following caution. Although there are occasional references in this memorandum to the law in a particular jurisdiction, these references primarily are for illustrative purposes; for the most part, we have cast the discussion in general terms. The various legal propositions that we have set forth probably have across-the-board application, but there may be some jurisdiction-to-jurisdiction variations that could impact on the development and implementation of a peer review program. Accordingly, a local association should be fully apprised of the specific nature of all relevant legal requirements before proceeding down this path.

* This is not to suggest that these programs have been litigation-free. In addition to the pending lawsuit against the peer review program in the Columbus Public Schools, *see* footnote 1, *supra*, numerous lawsuits and administrative complaints have been filed against the Toledo Federation of Teachers based upon its participation in that school district's peer review program, but none has been successful. *See* D. Lawrence, *The Relevance of Yeshiva to Public Education: A Union Perspective*, 16 J.Law & Educ. 113, 116 (1987). In the most recent lawsuit involving the Toledo peer review program that named the Toledo Federation of Teachers as a defendant—*Gallant v. Toledo Public Schools, et al.*, 68 ED ¶ 44,056 (Ohio Ct. of Appeals 1992)—summary judgment was granted for the defendants.

# APPENDIX D

# AFT's "Q&A" Regarding a Union's Duty to Fairly Represent Its Members

### What Is The Duty Of Fair Representation And When Does It Apply?

- The duty of fair representation (DFR) is a legal obligation which results from a union's right to exclusively represent all members of a designated unit. In this sense the DFR is the condition the union must satisfy in exchange for the right of exclusive representation.
- It may exist even where there is no collective bargaining under state law.
- The DFR is recognized in both the private and public sectors.
- The DFR applies where a union is negotiating or administering a contract or processing grievances.
- It most commonly arises in the processing of grievances.

### What Is The Standard Used To Determine When The DFR Has Been Violated?

Courts and administrative tribunals will look to whether the decision not to pursue the grievance was arbitrary, capricious or motivated by discrimination or hostility towards the grievant.

- If the union's decision was rational, a court will not second-guess the wisdom of that decision.
- Honest mistakes or misjudgments do not constitute violations of the duty of fair representation.
- Before a violation is found, courts will look for evidence of improper motive or bad faith by the union.

### Practically, What Should A Union Do To Avoid A DFR Challenge Related To The Processing Of A Grievance?

- The union should conduct its own good faith investigation of the merits of the grievance. The union should not rely on an investigation performed by others outside the union.

- The union should base the decision on whether to pursue the claim on the results of that investigation.
- The cost of pursuing the claim, the likelihood of success and the impact on the entire membership are valid considerations to weigh in making the decision as to whether to progress the claim.
- Of course, all members of the bargaining unit should be treated similarly and offered the same rights to representation. The organization should take a similar position on similar issues.

### *May The Collective Bargaining Agreement (CBA) Become The Source Of The DFR?*

- Yes. However, this is an extremely unlikely situation. In order for the union to become bound to represent members by the CBA, the CBA must expressly give the right of such representation to *individual* employees.

### *Would A Peer Review Program, Such As That Used In Toledo And Cincinnati, Leave A Union Vulnerable To DFR Claims?*

- No. As long as the union investigates the merits of the grievances independently and makes a decision which is not arbitrary or capricious, then the organization could even refuse to represent a member who had failed to satisfactorily complete the peer review process.
- However, the union's decision as to whether to represent the member must not be based solely on the results of the peer review process. Instead, it must be based on the results of the *union's own investigation.*

### *Does The Union's Participation In The Peer Review Process Create On Its Face A DFR Violation By Involving The Union In A Process Which Could Result In A Member's Dismissal?*

- No. Despite the union's involvement in the peer review process, the final decision as to whether to dismiss or suspend the member is still made by management. Management retains the right to second-guess or overrule the peer review committee's recommendations. In this sense, the union is insulated from liability under the DFR.
- In Ohio, the Education Code was specifically amended to eliminate any possibility that participation in peer review could result in a DFR charge.
- More importantly, the overall purpose of the peer review process is to protect the entire membership, including these who participate in the program, by establishing a means to internally maintain a high quality of teaching.

# APPENDIX E

# Legal Protections for Teacher Employment; A Brief Overview by the AFT

## I. ORIGINS AND PURPOSES OF TEACHER TENURE LAWS

Every state has a statutory procedure or system that provides for the continued employment of non-probationary K-12 public school teachers unless they are dismissed for cause, non-renewed, or furloughed. While the states share this common commitment to the job security of public school teachers, the procedural protections, terminology and rights of teachers vary substantially from state to state. For example, some states, such as Pennsylvania, specifically enumerate the reasons for dismissal. Pennsylvania law provides that the only causes for which a tenured teacher may be dismissed are "immorality, incompetence, intemperance, cruelty, persistent negligence, mental derangement...persistent and willful violation of the school laws of this Commonwealth."[1] However, the law in other states, such as Arkansas, provide that tenure positions "do not confer lifetime opportunities, nor prevent discharge of teachers for any cause which is not arbitrary, capricious or discriminatory."[2]

The purpose of most teachers tenure statutes is to secure a "competent and efficient school system by preventing dismissal of capable teachers without just cause."[3] At the time of passage of these laws, most state legislatures were concerned about nepotistic practices by schoolboards or superintendents which would result in the wholesale dismissal of qualified teachers with a change in administration. Like civil service laws, teacher tenure statutes were intended to ensure the development of a competent and professional cadre of K-12 teachers in our public school systems.

History has taught us that politics do invade the personnel arena. Further, teachers who are vulnerable to arbitrary dismissal will be deterred from advocating programs and resources they believe educationally vital.

Typically, a teacher does not acquire tenure until he/she has completed a probationary period. In most states, this period is three (3) years. Presumably, this period is intended to be used as an opportunity for evaluation of the new teacher to measure

[1] Pa. Stat. Ann. lit. 24 § 11-1122

[2] Ark. Stat. Ann. § 80-1266.2 (Supp. 1983)

[3] Teachers' Tenure Act cases, 197 A.344 (Pa. 1938)

areas such as: 1) instructional skill; 2) classroom management abilities including handling of student discipline issues; 3) knowledge of the subject matter; 4) interest in teaching pupils; and 5) effort toward improvement when needed.[4] However, great discretion is permitted to states in adopting the evaluation criteria they find necessary. Upon completion of the probationary period, it is common for most teachers to acquire "tenure" as defined in their state statute.

Absent a contract or collective bargaining agreement providing specific rights, probationary teachers may simply be dismissed or non-renewed for no stated reason. Usually, the probationary teacher is notified at the end of the school year that he/she will not be invited back the following year. Provided that such non-renewal is timely and does not violate the U.S. or state constitution or the Civil Rights or Disabilities Laws, the probationary teacher is without recourse to challenge this decision.

## II. CONSTITUTIONAL AND STATUTORY PROTECTIONS AGAINST UNJUST DISMISSAL

### A) Constitutional Protections

Once a teacher has successfully completed his/her probationary period under state law—*i.e.*, the teacher has certain, but not necessarily indefinite, rights to current and future employment—the U.S. Supreme Court has held that this teacher has a vested property right in his/her position under the due process clause of the fourteenth amendment and must be given reasons for their dismissal and an opportunity to be heard.[5] The Fourteenth Amendment to the U.S. Constitution provides that no state shall deprive any person of life, liberty or property without due process of law. For purposes of the 14th Amendment, public school districts are considered extensions of the state and tenure is a property interest. In the case of a dismissal for cause, due process requires, except in extraordinary circumstances, adequate notice to the teacher and a fair hearing before an impartial decisionmaker and the opportunity to present evidence *prior* to termination. Therefore, state civil service statutes or tenure laws which vest "for cause" job protections or at least a continued expectation of future employment create property interests that cannot be taken without due process. Such protections attach whether the tenured teacher has a contract which is continuing or limited; of course, a teacher who has a limited or fixed term contract may be released at the end of the contractual period without compliance with these due process protections.

The reasons for these procedural protections were succinctly explained by one court in the following manner:

> Examining the interests of the employee, the U.S. Supreme Court in Loudermill found that an employee terminated for cause had an important interest in a pretermination hearing because of the "severity of depriving a person of a means of livelihood,"...the stigma associated with a for-cause termination, and because dismissals for cause often involve factual disputes that should be heard before the employee suffers the loss of this property interest . . . On the other hand, the Court found the employer's interest in expediency of minimal importance in terminations for cause because delays need not be lengthy, the

[4] *See*, Wash. Rev. Code Ann. § 28A.67.065 (1)(1983)

[5] *Board of Education v. Loudermill*, 470 U.S. 532 (1985); *Board of Regents v. Roth*, 408 U.S. 564 (1972); and *Perry v. Sinderman*, 408 U.S. 593 (1972)

> employer shares the employee's interest in avoiding erroneous terminations, and the employer may continue receiving the benefits of the employee's labors during the pendency of the appeal.[6]

In some circumstances, probationary teachers are entitled to due process before they are dismissed. For example, a clearly implied contract which does not constitute formal tenure would likely constitute a property interest subject to due process protections. Similarly, it is possible that if a school district decides to dismiss a teacher for reasons that would stigmatize the teacher's professional reputation, the teacher's 14th Amendment "liberty" interest is implicated and procedural due process applies.[7] However, nontenured or probationary teachers generally have no entitlement to constitutional due process since they have no legal expectation of continued employment.

## B) Statutory Protections

To the extent that a teacher tenure statute sets forth certain criteria for dismissal, even if these exceed the minimum requirements of the state or federal constitution, courts will require technical compliance with such criteria. As mentioned earlier, besides specifying the causes for dismissal, teacher tenure acts often specify the procedure that must be followed to remove the teacher.

For example, a number of states in incompetency or inefficiency proceedings require what is known in the collective bargaining arena as progressive discipline but which is referred to in the state education codes as "remediation." Generally, this means that prior to dismissal proceedings, a teacher is evaluated by administrators, who identify deficiencies and provide the teacher an opportunity to correct them.

Obviously, not all conduct is remediable. However, to the extent a performance problem is remediable, then in those states that require remediation courts will overturn dismissals which do not follow the statutory remediation provisions. In these cases the courts typically reinstate the teachers because the teacher 1) was provided inadequate notice, 2) no notice or 3) notice which was so vague or unclear as to not permit the teacher an opportunity to correct any deficiencies.

Overall, to the extent that a court is faced with an appeal of an administrative decision to dismiss a teacher and outside of constitutional or civil rights challenges to such action the court will consider whether the administrative body followed the formalities of the tenure act, whether the decision was based on substantial evidence and whether the decision was neither arbitrary nor an abuse of discretion. Courts tend not to substitute their judgment for that of administrators on the merits of whether a given teacher is truly incompetent.

# *III. COLLECTIVE BARGAINING PROTECTIONS*

A number of states, including Michigan and New York, which have statutes authorizing collective bargaining for teachers, provide an option for arbitration of tenure dismissals. In these circumstances, the member elects to follow either the statutory review procedure or the arbitration options. Usually, once the decision is made by the member it becomes irrevocable.

The procedural protections incorporated in most collective bargaining agreements

[6] *American Federation of Government Employees v. Office of Personnel Management*, 821 F.2d 766, 767 (D.C.Cir.) (1987).

[7] *Board of Regents v. Roth, supra.*

approximate that provided by tenure laws. A typical grievance and discipline procedure in a collective bargaining agreement provides for advance notice of the charges to the member, opportunity to present evidence and be represented by counsel, and provision of a decisionmaker (arbitrator) who is neutral and not beholden to either party.

The "just cause" standard adopted in most agreements for dismissal is both broad and flexible enough to accommodate any charge set forth in a state tenure statute as well as substantively capable of protecting teachers against arbitrary or capricious dismissals. As interpreted by arbitrators, just cause subsumes issues such as whether the school district has met its burden of proof, whether adequate notice was provided to the member, whether principles of progressive discipline were followed as well as equitable concepts and defenses including bad faith, clean hands and timeliness.

One of the benefits of arbitration is that the process is usually completed more quickly than the statutory tenure procedure. Arbitrators tend to issue speedier decisions than courts or administrative agencies. Additionally, the grievance procedure leading up to arbitration proceeds at a faster pace than the administrative processes set forth in teacher tenure statutes.

## IV. THE DUTY OF FAIR REPRESENTATION

### A) What It Is

In the private sector, a union which has the "statutory authority to represent all members of a designated unit [also has] a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct."[8] This language delineates a union's duty to fairly represent all of its members under the National Labor Relations Act (NLRA) as well as the Railway Labor Act (RLA). However, many states, particularly those which authorize collective bargaining by public employees, have also applied this precedent in the context of their respective public employee relations.

The Supreme Court has consistently held that a duty of fair representation is a logical corollary to a union's status and powers as an exclusive bargaining agent for the employees represented. As such, those public employee unions which have been granted some form of exclusive representation will, most likely, also be held to the duty of fair representation as delineated in *Vaca*. Some states, such as Rhode Island, have adopted the Supreme Court's reasoning through their common law.[9] Other states, such as Ohio, have explicitly codified this duty of fair representation as part of their public employee relations acts.[10] Nonetheless, the contours of the duty as recognized in the public sector have generally followed those established in *Vaca* and should continue to in the future.

This duty does not restrict a union from taking "a good faith position contrary to that of some individuals whom it represents" or supporting "the position of one group of employees against that of another."[11] The duty of fair representation which is

[8] *Vaca v. Sipes*, 386 U.S. 171, 177 (1967), *citing*, *Steele v. Louisville and Nashville R.R.*, 323 U.S. 192 (1944); *see also*, *ALPA v. O'Neil*, 499 U.S. 65, 76 (1991); *Teamsters v. Terry*, 494 U.S. 558, 563 (1990); *Electrical Workers v. Foust*, 442 U.S. 42, 47 (1979); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564 (1976).

[9] *See*, *Belanger v. Matteson*, 346 A.2d 124, 129 (R.I. 1975).

[10] *See*, Ohio Revised Code Annotated ß 4117.11(B)(6) (Baldwin 1995).

[11] *Humphrey v. Moore*, 375 U.S. 335, 349-50 (1964).

imposed upon unions does not act to "squelch union advocacy of a position" or to "weaken a union's ability to act, when it does for all of its members, even those whose interests may not be served but who are nonetheless bound by the majority vote."[12] The duty does require that a union avoid conduct towards its members which is arbitrary, discriminatory, or in bad faith.[13] The union cannot be forced to remain neutral on these issues, despite the negative effects felt by some members, but any stand a union takes must be well reasoned, fair, and in the best interests of its membership.[14] Therefore, as a general matter, the interests of a teachers union and all teachers generally in upholding competence in the profession through the adoption of a peer review program meets the standards of the duty of fair representation.

## B) Processing and Pursuing Dismissal Grievances

A union has the discretion to refuse to process or pursue a member's grievance, even a dismissal grievance, without violating its duty of fair representation.[15] Generally, a union's refusal to process a grievance will not violate the union's duty of fair representation as long as certain prerequisites are met. When a discharge grievance is involved, however, special care must be taken to ensure that all of these prerequisites are met in a fashion which is neither arbitrary nor perfunctory.[16] Furthermore, in a situation where the member has already progressed without success through a peer review program then *these steps must be followed* in addition. Nonetheless, it is important to note here that more than mere negligence is required in order to find a breach of the duty of fair representation.[17]

The first prerequisite which must be met is that a decision not to process a grievance must be *unmotivated by discrimination or other hostility towards the grievant.*[18] Obviously, a good faith, reasoned, belief that a teacher is not meeting certain professional standards is not discriminatory. However, the decision must still be based upon a *good faith investigation of the situation.* This investigation must be more than a perfunctory or cursory review of the issues.[19] During the investigation, the affected member must be afforded the opportunity to place all relevant information before those making the decision.[20]

The eventual decision regarding the grievance must also be based upon a *good faith assessment of the merits* of the grievant's claim.[21] This assessment can not take matters

[12] *Belanger*, 346 A.2d 124 at 130.

[13] *Vaca*, 386 U.S. 171 at 190; *see also, O'Neil*, 499 U.S. 65 at 76; *Woods v. Graphic Communications*, 925 F.2d 1195, 1203 (9th Cir. 1991).

[14] *See, Belanger*, 346 A.2d 124 at 130-31.

[15] *See, Belanger*, 346 A.2d 124 at 130, *citing, Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953).

[16] *Tenorio v. NLRB*, 680 F.2d 598, 110 LRRM 2939, 2941 (9th Cir. 1982), *citing, Griffin v. International Union*, 469 F.2d 181, 183 (4th Cir. 1972).

[17] *Compare, e.g., Hoffman v. Lanza, Inc.*, 658 F.2d 519 (7th Cir. 1981) (intentional misconduct required); *Harris v. Schweman Trucking Co.*, 668 F.2d 1204 (11th Cir. 1982) (gross negligence required).

[18] *See, Steele*, 323 U.S. 192 at 204; *Vaca*, 386 U.S. 171 at 177.

[19] *Belanger*, 346 A.2d 124 at 130-31

[20] *See, Belanger*, 346 A.2d 124, 130, *citing, Bures v. Houston Symphony Society*, 503 F.2d 842 (5th Cir. 1974).

[21] *See, Smith v. Hussman Refrigerator Co.*, 619 F.2d 1229, 1237 (8th Cir. 1980); *Marshall v. Ormet Corp.*, 736 F.Supp. 1462 (S.D.Ohio 1990).

outside the merits of the individual grievance into account. For example, "a union may not agree with an employer, either expressly or tacitly, to exchange a meritorious grievance of an individual employee for some other supposed benefit."[22] The decision also cannot be based upon a desire not to implicate or harm other *individuals* within the bargaining unit arising, for example, out of a claim of racial harassment by one member against another.[23] It should be noted that the cost of taking a grievance forward is a valid consideration as long as the degree of merit and nature of the grievance are also used as factors in the decision[24]

## C) Quasi Contract Issues

The decision to support rigorous standards of performance and not to process the dismissal grievances of those who do not meet these standards may also implicate some quasi contract issues. The concern here is that a promise to represent all discharged employees could be considered the unspoken consideration offered by unions in return for a teacher's agreement to join and on this basis a quasi, as opposed to formal, contract would be formed. If this argument were accepted, the union would be legally responsible to represent discharged employees under common law contract and tort theories.[25] Also, unlike claims under the duty of fair representation, merely negligent failure to represent would be actionable under this theory. However, the U.S. Supreme Court's decision in *United Steelworkers v. Rawson*, 495 U.S. 362 (1990), limits this theory to only a narrow set of circumstances.

In *Rawson*, the Court reviewed the Idaho Supreme Court's decision stating that a bargained for union representative on an employer mine inspection committee amounted to a tacit agreement by the union to its members that it would police mine safety issues. The Idaho Supreme Court held that this tacit agreement was a substantial part of the consideration offered by the union in exchange for the workers' agreement to join the union and that a state law claim was, therefore, not pre-empted by federal law.[26]

However, the U.S. Supreme Court ruled that an obligation which would require unions to represent their members under contract and tort theories, which are more restrictive than the duty of fair representation, could not be created in the manner set out above. In order for an employee to support a claim that the duties owed to him are more far reaching than the duty of fair representation, the employee "must be able to point to language in the collective bargaining agreement specifically indicating an intent to create obligations enforceable against the union by *individual employees*."[27]

The public sector has not enlarged upon the theory of quasi contract liability discussed by the U.S. Supreme Court in *Rawson*. Federal case law on the duty of fair

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[22] *See, Woods*, 925 F.2d 1195.

[23] *Encina v. Tony Lama Co.*, 416 F.Supp. 239 (W.D. Tex. 1970), *aff'd per curiam*, 448 F.2d 1264 (5th Cir. 1971).

[24] Generally, state tort and contract actions against private sector unions which "can not be described as independent of the [applicable] collective bargaining agreement" or a union's representational duties are pre-empted by Section 301 of the Labor Management Relations Act at 29 U.S.C. § 185(a). *Rawson*, 495 U.S. 362 at 368. This form of pre-emption is also an integral part of the duty of fair representation as accepted in the public sector. *See, generally, Belanger*, 346 A.2d 124; Ohio Revised Code Annotated § 4117.

[25] *Rawson*, 495 U.S. 362 at 364-66.

[27] *Rawson*, 495 U.S. 362 at 372-375 (emphasis added).

representation is generally accepted as delineating the contours of the duty in the public sector. Therefore, in the absence of a specific statutory enactment creating such liability or language in a CBA giving individuals enforceable obligations to represent them, there is no support for quasi contract liability in the public sector.

## D) Reconciling Anti-Discrimination Statutes and the Duty of Fair Representation

It should be noted that a union which meets its duty of fair representation does not automatically avoid liability under discrimination laws such as Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. The requirements a union must meet in order to satisfy these anti-discrimination laws exist independently of the duty of fair representation. As such, when deciding how best to meet its duty of fair representation to all parties involved, a union should always keep the dictates of these statutes in mind.

These statutes require more than that a union fulfill its duty of fair representation. They require that the duty of fair representation be fulfilled in a manner which is free of any discriminatory motive. The dictates of these discrimination statutes also require that the duty of fair representation be fulfilled in a manner which does not create a hostile environment based upon the characteristics protected by each statute. Once again, unlike the duty of fair representation, mere negligence *will* violate the requirements of these statutes. As such, the standard of care which a union should follow in circumstances where discrimination claims are possible should be much higher than that discussed above.[28]

## CONCLUSION

There is much attention focused in the media and political circles on changing or even abolishing "tenure" for teachers. In some cases the evil cited by advocates for abolition of tenure is the alleged burdensomeness in dismissing incompetent teachers. As this brief review has shown, while a non-probationary teacher is entitled to constitutional due process prior to dismissal, that requirement is not in itself burdensome. Furthermore, to the extent that a local decides to adopt a peer review program to help ensure competency in the teaching profession, there is nothing inherent in that decision which exposes the local to liability under the duty of fair representation.



[28] A comprehensive discussion of this issue in the context of sexual harassment grievances can be found in a recent advisory memorandum issued by the AFT Legal Department. Copies of this memorandum, "A Union's Duty to Respond to Incidents of Sexual Harassment", may be obtained by contacting the Legal Department.[29] *Simberland v. Long Island R.R.*, 421 F.2d 1219, 1221 (2d. Cir. 1970

# APPENDIX F

# Peer Assistance and Review Programs: Guide to Contract Language

*Prepared by The NEA OFFICE of General Counsel*
*January 1998*

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# I. INTRODUCTION

The 1997 NEA Representative Assembly adopted Resolution D-6: Peer Assistance and Review Programs ("Resolution"), a copy of which can be found in this handbook in Appendix A. The type of program envisioned by the Resolution has two related—albeit analytically distinct—components. The first is the peer assistance component. This component involves a process by which rank-and-file teachers (i.e., those persons who are not employed in traditional managerial or supervisory positions) work with other rank-and-file teachers in an effort to help them hone their instructional skills, improve their classroom management, and otherwise become "better teachers," but the process does not implicate the evaluation of job performance. The second component is peer review. This component involves a process which calls upon rank-and-file teachers to participate in the evaluation of the job performance of other rank-and-file teachers.

Although NEA traditionally has endorsed the use of peer assistance in elementary and secondary schools, prior to the 1997 Representative Assembly it categorically was opposed to the use of peer review at this educational level.[9] The Resolution lifts this opposition, and acknowledges that, under certain circumstances, peer review may be an appropriate mechanism for helping to achieve NEA's educational objective of a qualified teacher in every classroom. As the language of the Resolution indicates, it is up to each local association to make the necessary assessment, and determine for itself whether "under [the existing] circumstances, a peer assistance or a peer assistance and review program is an appropriate mechanism for achieving" the educational objective set forth in the Resolution.

In conjunction with the Resolution, the 1997 Representative Assembly adopted several New Business Items which direct NEA to provide assistance to those local associations that opt to proceed down the road opened up by the Resolution. *See* NBI 1997-6, NBI 1997-11, and NBI 1997-12. This memorandum has been prepared pursuant to these New Business Items.[10] Specifically, it is designed to assist local associations in drafting a collective bargaining agreement provision dealing with a peer assistance and review program. Although we recognize that the Resolution is not limited to the collective bargaining context, this memorandum should, with certain fairly obvious adjustments, provide guidance to local associations that seek to develop a peer assistance and review program through "a joint association/school district agreement in non-bargaining states." Resolution, principle (a).

Several threshold matters should be considered by a local association before it attempts to negotiate a peer assistance and review program. Because this type of program—more specifically, the peer review component—is not universally accepted by rank-and-file teachers, a local association must determine in the first instance whether the membership will endorse the proposal, or whether it is likely to be divisive. (To the extent that there is any uncertainty in this regard, a local association may wish to consider "sequencing" the two components—that is, by initially negotiating and implementing a peer assistance program, and, on the basis of that experience, subsequently expanding the program to include a peer review component.

Moreover, because a peer assistance and review program is a joint association/school district effort, in the truest sense of the term, such a program is unlikely to succeed unless it has the support of both parties. Phrased otherwise, little would be gained if a school district reluctantly agrees to include the proposal in the collective bargaining agreement at the insistence of a local association, or if a local association "out-bargains" a school district in structuring the program. (Similarly, the successful

operation of a negotiated peer assistance and review program will depend on the continued cooperation and commitment of the parties, rather than on the enforcement of its provisions through the contractual grievance/arbitration procedure.) For purposes of this memorandum, we assume that a local association has considered these matters, and concluded that the environment is "right" for negotiating a peer assistance and review program.

## II. DEVELOPING A CONTRACT PROPOSAL

Although there is general agreement as to the basic components of a peer assistance and review program—*i.e.*, a joint governing body, participating teachers, consulting teachers—numerous subsidiary questions must be addressed in attempting to develop a comprehensive contract proposal. These questions relate, *inter alia*, to such matters as the composition, powers and operating procedures of the joint governing body; the method of funding the program; the identification of participating teachers and whether and under what circumstances such participation is mandatory; the qualifications, selection, training, compensation, and length of service of consulting teachers; the rights and obligations of participating and consulting teachers; the resolution of disputes that may arise regarding the operation or "outcomes" of the program; and the procedure for terminating the program if it turns out in operation to have unanticipated adverse consequences.

Because peer assistance and review programs are in a developmental stage, with a very limited track record, there are no firm answers to many of these questions. To be sure, a local association can look for guidance to a few lighthouse programs that have been in operation for several years, including those in Columbus, Toledo, and Cincinnati, Ohio, and Rochester, New York. In the final analysis, however, each local association must decide, based upon the relevant political and legal realities, which answers are most compatible with its own organizational objectives. This matter is complicated by the fact that local associations typically pursue both "union" and "educational" objectives. Thus, for example, although allowing participating teachers to challenge negative employment recommendations by the joint governing body through the contractual grievance/arbitration procedure may be most compatible with the concept of "union advocacy," there may be a certain tension between this approach and a local association's desire to have the program function as a mechanism for filtering-out teachers who simply "don't measure up."

Nor can these questions be considered independently. To the contrary, they are interrelated, and must be considered together in developing the contract article to ensure that its various component parts have a proper relationship to each other. To illustrate, consider the interplay between the recommendations forwarded to a school district by the joint governing body and the final decisionmaking authority of a school district regarding retention or termination of a participating teacher. The likelihood that a school district will be subject to a charge of improper delegation of its statutory responsibility because it "routinely accept[s] and act[s]" on recommendations of a joint governing body "composed of an equal number or a majority of representatives appointed by the local association," Resolution, principles (b) and (c), can be reduced by providing that the superintendent will have an opportunity to review these recommendations in advance. But a local association's reaction to such review probably would depend on other provisions of the contract article—including particularly whether the superintendent must concur or merely can comment on the recommendations of the joint governing body.

After identifying the relevant questions and the preferred organizational answers, a local association then must determine whether and to what extent each of those matters should be dealt with in the contract itself. Some matters may be of such detailed nature that their inclusion would produce a contract article of inordinate length and complexity. The preferable approach may be to deal with these matters administratively, through implementing guidelines promulgated by the joint governing body. Nor is it simply the length and complexity of the contract article that should be considered in deciding whether a particular matter should be dealt with in the contract itself or left to the guidelines. Because the contract generally is subject to ratification by the association membership and the school district, its provisions have a certain "permanence," as opposed to guidelines, which generally are developed, approved, and subject to periodic amendment by the joint governing body.

Although, with certain particularly controversial aspects of a contract article, a local association sometimes opts for silence or "calculated ambiguity" rather than risk creating an impasse, this approach has little to recommend it here. Because the success of a peer assistance and review program depends on the continuing cooperation and commitment of the parties, it would seem highly inadvisable during negotiations to sweep potential problems under the rug. These problems should rather be addressed and resolved. And, if resolution cannot be achieved, a local association should consider whether the areas of disagreement are sufficiently important to prevent the parties from moving forward.

Finally, in structuring a contract article for a peer assistance and review program, a local association must consider the controlling legal framework. Specifically, this would at a minimum involve the provisions of the relevant labor relations statute (and the interpretive caselaw) dealing with scope of bargaining, supervisory and managerial status, and duty of fair representation, as well as any provisions in the education code or other statutes that mandate certain types of evaluation procedures, or that assign specific evaluative responsibilities to individuals with administrative/supervisory certification.[11]

On the basis of the foregoing considerations, the contract article that emerges should reflect an acceptable balance among the organizational concerns of the local association, the educational needs of the school district, the realities of the collective bargaining process, and the controlling legal framework.

## III. ILLUSTRATIVE CONTRACT ARTICLE

In this section, we set forth an illustrative contract article for a peer assistance and review program. Before turning to the contract language itself, it is important to indicate why we have taken this approach, to explain the purpose of the illustrative contract article, and to make several other preliminary observations in order to put the illustrative contract article in the proper context.

**A.** Although the objectives sought by different local associations may in many respects be similar, the specific contract proposals that local associations may choose to make with regard to peer assistance and review programs can vary widely. No one way is "best," nor is it practicable to catalogue all possible approaches. The most utilitarian approach is to set forth certain material in the form of an actual contract article, and, using this as a working point of reference, to indicate in the discussion following each section of the article some of the potential problems and alternative methods for dealing with them. This approach also focuses attention on an important related aspect in the preparation of a contract article—namely, the matter of structur-



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ing the article so that its various component parts appear in proper relationship to each other.

It also should be emphasized that the illustrative contract article, precisely as drafted, may not be appropriate in any particular school district. It is intended for reference only. A local association well may find it necessary to tailor the illustrative contract article to meet local conditions, and the suggested language should not be accepted uncritically. In the final analysis, a local association must determine whether, and understand how, each aspect of the illustrative contract article will work in its own school district.

***B.*** Because the Resolution is cast in alternative terms—i.e., a local association may decide to develop "a peer assistance or a peer assistance and review program"—it envisions two related, but analytically distinct, contract articles. Nor is this simply a matter of drafting contract language for a multi-part peer assistance and review program, and then using the peer assistance portion independently. A properly drafted contract article should be an integrated whole, and the positions taken with regard, for example, to the structure and operation of the joint governing body, the criteria for selecting consulting teachers, and the right of participating teachers to challenge the operation of the program could differ depending on whether the program might impact on continued employment. Despite these and other possible differences, there would be considerable overlap between the two articles, and a local association that opts solely for a peer assistance program should be able without too much difficulty to make necessary adjustments in the illustrative contract article for a peer assistance and review program that is set forth in this memorandum.

***C.*** The Resolution contains certain recommended principles for a peer assistance and review program, and these principles are reflected in the illustrative contract article. Although we believe that adherence to those principles will in most cases contribute to the effectiveness of the program, they may not reflect the thinking of particular local associations. Moreover, some of these principles may present legal problems in certain jurisdictions, or may not be politically or organizationally realistic. Accordingly, in the explanatory comments that follow each section of the illustrative contract article we suggest alternative ways to deal with certain of the points at issue.

***D.*** The illustrative contract article makes reference to various problems—legal and otherwise—that might arise in connection with a peer assistance and review program. Some observers may contend that we are being unduly concerned, and note in support of this contention that many of these potential problems have not materialized in connection with the peer assistance and review programs that have been in effect in Columbus, Toledo, and Cincinnati, Ohio, Rochester, New York, and certain other school districts for many years. There are two responses to this contention. To begin with, the objective in drafting any contract article is to anticipate and deal with potential problems, and that effort hardly can be considered wasted because the anticipated problems in fact do not arise. Moreover, the experience in a handful of selected school districts—all of which are relatively large, have powerful unions, and share certain other characteristics—does not necessarily provide an accurate basis for predicting what may happen if peer assistance and review programs become commonplace, and are implemented in school districts with quite different characteristics.

***E.*** As indicated above, one of the most difficult tasks in drafting a contract article for an on-going program—such as a peer assistance and review program—is to decide what aspects to address in the contract itself and what aspects to reserve for implementing guidelines. Considerations of membership approval versus administrative

discretion, permanence versus flexibility, etc., help to inform this decision, but there is in the final analysis no bright line distinction, and different approaches can be taken. At one end of the continuum, for example, is the contract between the Columbus (Ohio) Education Association and the Columbus Board of Education, which contains only four paragraphs dealing with the peer assistance and review program, indicating that "[t]he evaluation and any related actions involving teachers during the period of assignment to the Peer Assistance and Review Program (PAR Program) shall be in accordance with the procedures established by the PAR Program Panel." These latter procedures—which presumably are not subject to Association membership ratification or Board of Education approval—are reflected in a 12-page document that addresses in detail the structure and operation of the PAR Program.

In the illustrative contract article, we have opted for somewhat greater inclusion in the contract. This reflects our view that the membership—rather than the joint governing body—should have the final say as to the basic purpose and structure of the peer assistance and review program, and that the basic rights and obligations of participating and consulting teachers should not be subject to modification simply by action of the joint governing body. It is important to point out, however, that neither the substantive treatment of the issues nor the language necessarily would be different if it is decided to defer more to the guidelines.

One final—but critical—comment is appropriate in regard to the relationship between the contract and the guidelines. As is the case with virtually all of the existing peer assistance and review programs, the illustrative contract article makes little or no attempt to outline the specific procedures that would be used to identify teachers who are not performing at a satisfactory level, to select and train consulting teachers, etc., making reference instead to procedures set forth in the guidelines adopted by the joint governing body. Nor does the illustrative contract article attempt to deal with the "professional practice" aspects of the peer assistance and review program, such as the techniques that would be used by consulting teachers in working with participating teachers or the evaluative criteria that would be relevant in determining whether a teacher is performing at a satisfactory level. Wherever a local association may choose to draw the specific line of demarcation between the contract and the guidelines, matters of this type seem clearly to fall on the latter side of the line. Because, in the final analysis, it is these matters that largely will determine whether a peer assistance and review program achieves its intended purposes, this memorandum should not be used in isolation, but rather in conjunction with other NEA material that is designed to assist local associations in developing program guidelines—including particularly the document entitled "Peer Assistance And Review: An NEA Background Paper For Local Affiliates," Appendix C of this handbook."

It is with these observations in mind, that we turn now to the illustrative contract article itself.[12] By way of format, the article is divided into sections, and after each section there is an explanatory "comment," which is designed to highlight certain key points. (For ease of reference, the text of the illustrative contract article—without the explanatory comments—is attached to this memorandum as Attachment A.)

## A. Preamble

The Association and the School District believe that optimum student performance can be achieved only if there is a qualified teacher in every classroom. They believe further that a peer assistance and review program ("PARP")—the primary purpose of which is to improve teaching performance—significantly can contribute to the attainment of this objective. Accordingly, the parties agree as follows:

***COMMENT***

*Although a preamble is not an operative provision—in the sense that it grants no specific rights to, and imposes no specific obligations on, the parties—it is not without significance. The section enables the parties to articulate in positive terms for the members of the bargaining unit specifically and the broader education community generally the purposes of the PARP—and it reflects their joint commitment to those purposes.*

## B. PARP Council

1. A PARP Council ("Council") will be established promptly after the effective date of the Agreement. The Council will consist of nine (9) members, including the Association President and four (4) other members appointed by the Association, and the Assistant Superintendent for Personnel and three (3) other members appointed by the School District. The Council will establish its own rules of procedure, including the method for the selection of a Chairperson.

2. The School District will appropriate not less than _____ dollars ($_____) each school year for use by the Council in carrying out its responsibilities. The Council may expend this money for its own operating expenses, retaining consultants, and any other costs incurred in implementing the PARP, but this appropriation will be independent of the compensation that is paid to Consulting Teachers. Any portion of an annual appropriation that is not expended during the school year in question will be carried over for use by the Council in the succeeding school year, and said carryover will reduce the amount that the School District is obligated under this Section to appropriate for such succeeding school year. The School District, in addition, will provide the Council with appropriate administrative and clerical support.

3. The Council will establish its own meeting schedule. Such meetings may take place during the regular workday, in which event teachers who are members of the Council will be released from their regular duties without loss of pay. If, in carrying out their responsibilities as members of the Council, teachers find it necessary to work beyond the regular workday, they will be compensated for such additional work in accordance with Article __ (Compensation) of the Agreement.

4. The Council will, among its other functions, conduct as part of the in-service training program at the beginning of each school year a PARP orientation program, which will be designed to explain the purposes, structure, and operation of the PARP to teachers and members of the administration.

5. The Council, by majority vote, will adopt PARP Guidelines ("Guidelines") for effectuating the provisions of this Article. Said Guidelines will be consistent with the provisions of the Agreement, and to the extent that there is any inconsistency, the Agreement will prevail. The Council may amend the Guidelines from time-to-time as it deems appropriate, provided that any such amendment will have prospective effect only.

***COMMENT***

*The Resolution, principle (b), recommends that the PARP be governed "by a board composed of an equal number or a majority of representatives appointed by the local association"; Section B(1) of the illustrative contract article provides that five of the nine members of the Council will be appointed by the association. In attempting to sell this position to a school*

*district, it is appropriate to point out that the Council is to some extent only an advisory body. Thus, the Council does not have final decisionmaking authority with regard to the employment status of teachers who participate in the PARP, but rather makes recommendations to the Superintendent, who in turn makes recommendations to the School Board, which has final decisionmaking authority.* See, e.g., *Sec. C(1)(c). Although it is anticipated "that recommendations forwarded by the joint governing body [will be] routinely accepted and acted upon by the district," Resolution, principle (c), the School Board retains the right to reject any recommendations that it believes may reflect the parochial interests of the Association as opposed to the broader interests of the educational system.*

*Nor does the fact that there are a majority of Association representatives necessarily mean that the Association will dictate the actions of the Council. A school district may agree to this allocation of seats only on condition that certain Council actions (e.g., adoption of the Guidelines) require a supermajority of six or more votes. The possibility of this type of compromise also indicates the need to consider a contract article in its entirety.* See *Section B(5), which provides that "[t]he Council,* by majority vote, *will adopt Guidelines for effectuating the provisions of this Article." (Emphasis added).*

*Another consideration with regard to the composition of the Council is whether the contract should provide that the Association President and the Superintendent be members of the Council, and, if so, whether one of them (or perhaps both on a rotating basis) should be designated as Council Chairperson. The argument in support of an affirmative answer to the first (and perhaps also the second) of these questions is that inclusion of the highest officials of the contracting parties would enhance the stature of the Council and demonstrate the importance accorded to the PARP.*

*The reason why the illustrative contract article does not include the Superintendent on the Council again indicates the interrelationship among the various sections of a contract article. Many states have statutes which require that employment actions taken by a school district be based on recommendations made by the superintendent. Consistent with this requirement, the illustrative contract article provides that "the Council will make a recommendation to the Superintendent . . ., who, in turn, will make his or her employment recommendation to the School Board."* E.g., *Section C(1)(d). If the Superintendent is a member of the Council, he presumably would be obligated to pass on to the School Board the employment recommendation of the Council, without making an independent determination as to the issue—which would seem to be contrary to the spirit, if not the letter, of the referenced statutory requirement. The intent, of course, would be for the Superintendent to concur in virtually all cases with the recommendation of the Council, and for the "recommendations forwarded by the joint governing body [i.e., the Council] [to be] routinely accepted and acted upon by the district." Resolution, principle (c). To the extent that the Superintendent stands apart from the Council, and submits to the School Board what purports to be an independent recommendation, the School Board will be less subject to a charge of improper delegation of its statutory responsibility. Although several of the existing peer assistance and review programs take a contrary approach, and include the superintendent on the joint governing body apparently without having encountered any legal difficulty, this is not necessarily an adequate barometer of the legal problems that may arise if the use of peer assistance and review programs becomes more widespread.*

*Section B(2)—which deals with funding for the PARP—must be considered in conjunction with a basic concept that informs the illustrative contract article. Consistent with principle (f) in the Resolution, that "consulting teachers are properly compensated," the illustrative contract article provides that they be paid an additional stipend for performing this function.* See *Section D(4)(b). It also provides in this Section that teacher members of the*

*Council be appropriately compensated if they "find it necessary to work beyond the regular workday." Section B(3). Under the illustrative contract article, these costs—which could be considerable—are to be paid from the School District's regular compensation account, rather than from the money allocated for the implementation budget of the PARP.*

*In addition to providing that teacher members of the Council will receive additional compensation for work beyond the regular workday, Section B(3) states that such members "will be released from their regular duties without loss of pay to attend" Council meetings. If it is anticipated that these meetings, or other Council responsibilities, will consume a significant amount of time—so that teacher members will find it difficult adequately to perform their regular duties—the second sentence of Section B(3) could be amended to provide that these teachers be given an appropriately reduced workload or assigned a teacher-partner during their period of service.*

*Although, by operation of law, the provisions of the Agreement would prevail over any conflicting provisions in the Guidelines, the express statement to this effect in Section B(5) avoids any confusion on this point. The proviso in that same Section—that amendments to the Guidelines "shall have prospective effect only"—is designed to avoid the often inequitable consequences of retroactive application, and is consistent with the injunction in principle (I) of the Resolution that the PARP "[e]nsure due process."*

## C. Participating Teachers

A Participating Teacher is a teacher who receives assistance through the PARP in an effort to improve his or her instructional skills, classroom management, knowledge of subject, and related aspects of his or her teaching performance ("teaching performance"). There are three (3) categories of Participating Teachers as follows:

*1. New Teacher Participants*

a. In order to help them successfully begin their careers in the School District, all newly-hired teachers who have not previously participated in the PARP, including newly hired teachers with previous teaching experience, are required to participate in the PARP during their first year of service in the School District ("New Teacher Participant" or "NTP"). The purpose of such participation is professional development and evaluation. The Council may exclude a newly hired teacher from the PARP because of special job-related considerations.

b. The Council will assign a Consulting Teacher to work with the NTP. At the request of the NTP or the assigned Consulting Teacher, or on its own initiative, the Council may assign a different Consulting Teacher to work with the NTP at any time during the school year.

c. (i) Based upon direct classroom observations, conferences, and such other means as may be appropriate, the Consulting Teacher will assist the NTP to achieve as high a level of teaching performance as possible. Prior to December 1 of the school year, the Consulting Teacher will prepare at least one (1) written Interim Report for the NTP. A copy of each Interim Report will be submitted to, and discussed with, the NTP. Following such discussion, a copy of each Interim Report will be submitted to the Council. The NTP will have the right to submit to the Council a written response to each Interim Report of the Consulting Teacher.

(ii) Prior to April 1 of the school year, the Consulting Teacher will prepare a written Final Report for the NTP, which will include a recommendation as

to whether the NTP should be reemployed for the next school year. A copy of said Report will be submitted to, and discussed with, the NTP. Following such discussion, a copy of the Final Report will be submitted to the Council. The NTP will have the right to submit to the Council a written response to the Final Report of the Consulting Teacher. If the Consulting Teacher recommends that the NTP not be reemployed for the next school year, the NTP, at his or her request, will have the right to meet with the Council before it makes a recommendation to the Superintendent, and to be represented at this meeting by a representative of his or her choice.

d. Based upon the Final Report and such other job-related considerations as it may deem relevant, the Council will make a recommendation to the Superintendent regarding reemployment of the NTP for the next school year, and the Superintendent, in turn, will make his or her employment recommendation to the School Board. If the Superintendent's recommendation differs from the Council's recommendation, the latter recommendation also will be submitted to the School Board, together with such supporting material as the Council may deem relevant.

e. It is the intent of the parties that the PARP be the exclusive method used to evaluate the teaching performance of an NTP. Accordingly, unless otherwise required by law, no other method, whether provided for by statute, regulation, School District policy, or the Agreement, will be used for this purpose while an NTP is participating in the PARP. Such other methods may be used to evaluate the teaching performance of a newly-hired teacher who is not participating in the PARP, provided that a newly-hired teacher will not be terminated or subjected to any other adverse employment action for job-related deficiencies (as defined in Section 2(a) below) other than as a result of his or her participation in the PARP.

*2. Experienced Teacher Participants*

a. Experienced teachers (*i.e.*, with at least one (1) year of prior teaching service in the School District) who exhibit serious job-related deficiencies may be required to participate in the PARP ("Experienced Teacher Participant" or "ETP"). The term "job-related deficiencies" includes chronic deficiencies in instructional skills, classroom management, knowledge of subject, or related aspects of teaching performance, but does not include attendance problems, repeated tardiness, failure to complete required attendance or grade reports, or to comply with other similar administrative requirements or directives, other forms of misconduct, or an isolated problem in the teaching performance of an experienced teacher whose overall teaching performance is satisfactory. The purpose of such participation is to help the ETP correct the job-related deficiencies, and achieve a satisfactory level of teaching performance; and, in cases where the necessary improvement does not occur, to facilitate the removal of the ETP from the classroom or the termination of his or her employment with the School District.

b. The procedure for referring an experienced teacher to the PARP will be set forth in the Guidelines, provided that the final decision to refer will be made by the Council. An experienced teacher who has been recommended for participation in the PARP, and who objects to such participation, at his or her request, will have the right to meet with the Council before it makes a final decision in this regard, and to be represented at this meeting by a representative of his or her choice. The decision of the Council to refer an experienced teacher to the PARP will not be subject

to the grievance/arbitration procedure in Article __ of the Agreement.

c. The Council will assign a Consulting Teacher to work with the ETP. At the request of the ETP or the Consulting Teacher, or on its own initiative, the Council may assign a different Consulting Teacher to work with the ETP at any time during the school year.

d. Consistent with the Guidelines, the Consulting Teacher will use such methods as he or she deems appropriate to help the ETP correct the job-related deficiencies and achieve a satisfactory level of teaching performance. The Consulting Teacher will submit periodic written Status Reports to the Council. The Consulting Teacher will continue to provide assistance to the ETP until he or she concludes that the teaching performance of the ETP is satisfactory, or that further assistance will not be productive, at which time the Consulting Teacher will submit a written Final Report to the Council, which will include a recommendation regarding the future employment status of the ETP. A copy of each Status Report and the Final Report of the Consulting Teacher will be submitted to, and discussed with, the ETP before it is submitted to the Council. The ETP will have the right to submit to the Council a written response to each Status Report and to the Final Report of the Consulting Teacher. If the Consulting Teacher concludes in the Final Report that a satisfactory level of teaching performance has not been achieved, the ETP, at his or her request, will have the right to meet with the Council before it makes an employment recommendation to the Superintendent, and to be represented at this meeting by a representative of his or her choice.

e. Based upon the Final Report and such other job-related considerations as it may deem relevant, the Council will make an employment recommendation to the Superintendent.

f. It is the intent of the parties that the PARP be the exclusive method used to evaluate the teaching performance of an ETP. Accordingly, unless otherwise required by law, no other method, whether provided for by statute, regulation, School District policy, or the Agreement, will be used for this purpose while an ETP is participating in the PARP. Such other methods may be used to evaluate the teaching performance of an experienced teacher who is not participating in the PARP, provided that an experienced teacher will not be terminated or subjected to any other adverse employment action for job-related deficiencies other than as the result of his or her participation in the PARP.

*3. Volunteer Teacher Participants*

a. An experienced teacher (*i.e.*, with at least one (1) year of service in the School District) who is experiencing teaching performance problems or seeks to improve his or her teaching performance may request the Council to assign a Consulting Teacher to work with him or her under the PARP ("Volunteer Teacher Participant" or "VTP"). The Guidelines will set forth the procedure for selecting VTPs, and the rights and obligations of VTPs. It is expressly understood that the purpose of such participation is to provide peer assistance, and the Consulting Teacher will play no role in the evaluation of the teaching performance of a VTP. A VTP may terminate his or her participation in the PARP at any time.

c. All communications between the VTP and the Consulting Teacher will be confidential, and, without the written consent of the VTP, will not be shared with oth-

ers, including the Council. The Consulting Teacher will not, without the written consent of the VTP, be called by the Association or the School Board to testify, produce documents, or participate in any way in an arbitration or any other proceeding involving the teaching performance of the VTP.

***COMMENT***

*The threshold decision to be made in developing a peer assistance and review program is what the program is designed to accomplish, and that decision will be reflected largely in the section of the contract article dealing with Participating Teachers. The illustrative contract article takes a broad position in this regard—the PARP is designed "to help [all newly-hired new teachers] to successfully begin their careers in the School District," Section C(1)(a), to assist those experienced teachers "who exhibit serious job-related deficiencies" to correct those deficiencies, and, if possible, achieve "a satisfactory level of teaching performance," Section C(2)(a), and to provide assistance to experienced teachers who voluntarily conclude that peer assistance would help them to overcome "teaching performance problems or . . . improve [their] teaching performance," Section C(3)(a). Whether a local association chooses to have its peer assistance and review program include one, two, or all of these purposes will depend on a combination of policy and practical considerations. Indeed, if adequate resources are available and a local association wishes to proceed on an even more ambitious scale, it might redefine the line between NTPs and ETPs to include in the former, across-the-board, category not merely teachers "during their first year of service in the School District," but rather during their entire probationary period.*

*As indicated previously, it is assumed for purposes of the illustrative contract article that a local association has accepted the basic notion of rank-and-file teachers participating in the evaluation of the teaching performance of other rank-and-file teachers. But the degree of such acceptance may vary, and in relative terms peer participation in the evaluation of newly-hired teachers may be less controversial than peer participation in the evaluation of experienced teachers. To the extent that this is the case, a local association may opt to limit the PARP accordingly. Quite apart from questions of policy, practical considerations may be relevant when determining the reach of the PARP. The amount of money that is made available to implement the program or the number of teachers who are available to serve as Consulting Teachers may be limiting factors, and, for example, prevent the inclusion of voluntary teacher participants. It is in light of these realities, that we offer certain comments about the illustrative contract article.*

*In order for peer assistance—which, of course, is the fulcrum of any program—to be productive, there must be a proper working relationship between the Participating Teacher and the Consulting Teacher. This argues for some type of a "veto" power, pursuant to which a Participating Teacher or a Consulting Teacher—for any non-arbitrary reason—can change an assignment. In practical terms, however—particularly in a program such as the PARP that includes across-the-board participation by all newly-hired teachers—this could produce a logistical nightmare. Moreover, to the extent that the basis for exercising the veto power is not evident at the outset—which would seem likely in many cases—mid-school year reassignments could disrupt the program. The illustrative contract article takes a compromise position in this regard, allowing either the Participating Teacher or the Consulting Teacher to "request" a reassignment, but leaving the final decision up to the Council, which could assess the situation, and, after considering all relevant factors, decide whether and on what terms to grant the request.*

*The illustrative contract article does not deal with the specific nature of the assistance to be provided to Participating Teachers, or the factors that should be considered in evaluating teaching performance. Because it is desirable to have maximum flexibility in dealing with*

*these matters, they more appropriately are left for the Guidelines.*

*Consistent with the Resolution, principle (j), the illustrative contract article provides for certain written reports in both the peer assistance and peer review aspects of the PARP. See Section C(1)(c); Section C(2)(d). To "ensure due process protection," Resolution, principle (l), copies of all such reports must be submitted to, and discussed with, the Participating Teacher; he or she has the right to submit a response; and, if the Consulting Teacher makes a negative recommendation, the Participating Teacher, at his or her option, has the right to meet with the Council before the Council acts on the recommendation.*

*Because the New Teacher Participant aspect of the PARP is an across-the-board process, there is no onus to participation. This is not the case with regard to the Experienced Teacher Participants: participation in the PARP is selective, and such participation in and of itself has significant employment ramifications. Because of this, both the substantive basis for referring an experienced teacher to the PARP, and the procedure to be followed in this regard, warrant careful consideration.*

*The question of substance is dealt with in Section C(2)(a), which makes the touchstone for referral "job-related deficiencies." Although a Consulting Teacher might advise an ETP as to any aspect of his or her job performance, the primary role of a Consulting Teacher is to help the ETP become a better teacher. Accordingly, the term is defined to include the types of problems that would lend themselves to peer assistance, as opposed to occasional lapses by an otherwise qualified teacher or behavior that more properly might be termed "misconduct."*

*The procedure for referring an experienced teacher to the PARP likewise is of critical importance. Although the illustrative contract article leaves this matter to the Guidelines, it guarantees that an experienced teacher who objects to his or her participation, "shall, at his or her request, have the right to meet with the Council before it makes a final decision in this regard, and may be represented at this meeting by a representative of his or her choice." Section (C)(2)(b).*

*A question that arises in regard to this and certain other aspects of Section C is whether the Council's decision should be final, or whether teachers should have the right to appeal to an arbitrator or other impartial third party certain decisions of the Council that impact adversely upon their employment. The illustrative contract article does not afford such appeal rights to teachers. (Moreover, the fact that the illustrative contract article provides for the Council to make "final decision[s]," would preclude the Council from establishing in the Guidelines mechanisms which cede this power to an arbitrator—although the use of an arbitrator to render an advisory opinion before the Council takes final action would not be precluded.)*

*The illustrative contract article takes this position for several reasons. First and foremost, because of the composition of the Council and the involvement of the Association, it is anticipated that the Council will act in a responsible and equitable manner. Also, because the decisions of the Council do not in and of themselves determine the employment status of Participating Teachers, but rather are recommendations, the School Board remains, as it must by law, the final decisionmaker, and a Participating Teacher will have certain rights in that forum. See Section F. And, finally, the practical ramifications of giving Participating Teachers the right to appeal the various decisions of the Council cannot be overlooked. The unrestrained exercise of this right has the potential to overwhelm the PARP and undermine its effectiveness.*

*The foregoing is not meant to suggest that giving teachers the right to appeal a decision of the Council is inappropriate, and a local association—perhaps out of a concern for due process—might choose to provide this right. It could do so through the Guidelines, by appropriately amending Section C(1) and C(2)—e.g., by deleting the word "final" in referring to*

*the decision of the Council in Section C(2)(b), and revising the final sentence of the Section to read as follows:*

*Although the decision of the Council to refer an experienced teacher to the PARP will not be subject to the grievance/arbitration procedure in Article __ of the Agreement, the Guidelines will include a procedure pursuant to which an experienced teacher who objects to his or her participation in the PARP can challenge the decision of the Council before an impartial third-party, who will have the power to make a final ruling in this regard. Unless an experienced teacher invokes this procedure, the decision of the Council will be final.*

*A local association may find it anomalous to delegate to the Council the responsibility to develop a procedure to challenge its own decisions, and prefer to set forth the appeal procedure in the contract itself. In regard, for example, to a Council decision to refer an experienced teacher to the PARP, which as noted could have certain adverse employment consequences in and of itself, Section C(2)(b) of the illustrative contract article could be amended to read as follows:*

*The Guidelines will set forth the procedure for referring an experienced teacher to the PARP, provided that an experienced teacher who has been recommended for participation in the PARP, and who objects to such participation, at his or her request, will have the right to meet with the Council, and to be represented at this meeting by a representative of his or her choice. If, after said meeting, the Council intends to refer the experienced teacher to the PARP, he or she may request that the matter be submitted to a three (3) member panel, consisting of one (1) member appointed by the experienced teacher, one (1) member appointed by the Council, and (1) member, who will serve as panel chairperson, appointed by the other two members. The decision of the panel will be final. The affirmative vote of at least two (2) members of the panel will be required to refer the experienced teacher to the PARP. If the panel does not vote to refer the experienced teacher to the PARP, he or she may not again be referred for such participation for at least twenty-four (24) months after the panel issues its decision. The procedure for implementing this provision will be set forth in the Guidelines.*

*Pursuant to this latter directive, the Guidelines would set forth appropriate timelines, allocate any expenses incurred in the appeal, provide a method for selecting the third member of the panel if the first two members cannot agree, etc.*

*One need not be omniscient to recognize that an experienced teacher who is required to participate in the PARP over his or her objection may not be a particularly good candidate for peer assistance. Accordingly, a local association may choose to take a different approach in dealing with this matter. Rather than allowing a recalcitrant experienced teacher to appeal the decision of the Council, and perhaps still be required to participate in the PARP, a local association could allow such a teacher to "opt-out," with the understanding that he or she then could be terminated or subjected to other adverse employment actions as the result of whatever alternative methods of evaluation the school district might have in place, with the traditional—and often limited—rights of appeal. Confronted with this choice, an experienced teacher may find participation in the PARP the "lesser of two evils," and be a more cooperative participant. This approach would require amending Section C(2)(b), and the proviso at the end of Section C(2)(f), of the illustrative contract article.*

*Consideration of the right of Participating Teachers to challenge Council actions leads to an analytically distinct—but related—point. As a* quid pro quo *for agreeing to a peer assistance and review program in which a local association plays a major—and perhaps predominant—role, it is possible that a school district will ask the association to waive its right to challenge under the contractual grievance/arbitration procedure adverse employment actions taken by the school district when implementing the recommendations of the joint governing body. As noted in the NEA's legal memorandum, a local association probably could agree to*

*such a request without violating its duty of fair representation.* (See *Appendix C, at page C6). Whether a local association is prepared to do so as a matter of policy is, of course, a different question, which a local association may view as raising concerns about "union advocacy." In attempting to resist such a request by a school district, it is appropriate to argue that this is a matter of internal association operation that does not properly belong in the contract, and the school district should rely on the association's good faith in this regard.*

*Even if a local association were prepared to agree to the school district's request, it should limit the waiver to substantive disagreements by Participating Teachers with the recommendations of the Council, and reserve the right to pursue allegations by Participating Teachers that an adverse employment action resulted from the improper operation of the PARP. This position is reflected in the following provision, which could be added to the end of Section C of the illustrative contract article as Section C(4):*

*a. A challenge to an employment action taken by the School District with regard to a Participating Teacher in implementation of a recommendation made by the Council will not be subject to the grievance/arbitration procedure in Article ___ of the Agreement, provided that this Section will not apply to the extent that the challenge is based on an allegation of a procedural defect, bias, or other irregularity in the operation of the PARP.*

*b. Section C(4)(a) above specifically is limited to the grievance/arbitration procedure in Article __ of the Agreement, and does not limit the right of a Participating Teacher to challenge the School District's action in any other judicial or administrative forum that may be available to him or her.*

*Sections C(1)(e) and C(2)(f) state the obvious: the PARP should be the exclusive method for evaluating teachers who participate in the program. To have an NTP or an ETP simultaneously evaluated by the administration would defeat the purpose of the PARP, quite apart from the practical problem that would result if the two evaluations produced inconsistent outcomes. This matter may not be entirely in the control of the parties, however, inasmuch as there are statutes in some states that mandate certain specific evaluation procedures, particularly for non-tenure teachers. Illustrative is New Jersey, in which state law requires non-tenured teachers to be evaluated by a "certified supervisor," and if improvement is needed, an "individual professional improvement plan" must be developed by the "supervisor" and the teacher. N.J.A.C. 6:3-4.3(a). It presumably would not be possible under a statute of this type to make the PARP the exclusive method for evaluating the NTP or a non-tenured ETP (and, indeed, such a statutorily-mandated evaluation procedure arguably might be deemed to "occupy the field," and preclude even a side-by-side peer review program). In developing a contract article, a local association should be aware of the controlling law in this regard, and draft the language accordingly. For purposes of the illustrative contract article, we have taken a more generic approach, indicating that the PARP is the exclusive method for evaluating a NTP and an ETP "unless otherwise required by law."*

*Somewhat more problematic is the evaluation of the teaching performance (as defined in the first sentence of Section C) of newly-hired and experienced teachers who are not participants in the PARP. To also exempt these teachers from other methods of evaluation would create a "vacuum," and prevent the school district from making any type of assessment of the teaching performance of most teachers. By the same token, however, to permit an alternative method of evaluation to result in a termination or other adverse employment action would be at odds with the basic purpose of the PARP, which is to ensure that teachers who can achieve a satisfactory level of performance through "rigorous and extensive [peer] assistance," Resolution, principle (k), receive such assistance, and that their teaching careers not be aborted because of correctable deficiencies.*

*The illustrative contract article attempts to accommodate these competing considerations by providing that teachers who do not participate in the PARP may be subject to other methods of evaluation, but rather than resulting in a termination or other adverse employment action, a negative evaluation presumably would provide the basis for referring the teacher in question to the PARP. (If a local association adopts the alternative "opt-out" approach discussed above, this would not be the case with regard to an experienced teacher who declines to participate in the PARP.)*

*Section C(3)—Volunteer Teacher Participants—involves only peer assistance. In order to encourage participation, the Section makes it clear that this is a confidential process, that imposes no stigma, and that can have no bearing on the evaluation of the teaching performance of a Volunteer Teacher Participant. For this reason, the nature of the process is left essentially to the Guidelines, and the illustrative contract article does not provide the due process protections that are included in Sections C(1) and (2).*

## D. Consulting Teachers

1. A Consulting Teacher is a teacher who provides assistance to a Participating Teacher pursuant to the PARP. The qualifications for Consulting Teachers will be set forth in the Guidelines, provided that the following will constitute minimum qualifications:

    a. A teaching certificate for the educational level of assignment (e.g., elementary, middle level/junior high, secondary); and

    b. At least five (5) years of experience in the School District as a teacher at the educational level of assignment.

2. In order to fill a position of Consulting Teacher, a notice of vacancy, which includes the qualifications for the position, will be posted in all schools and in the School District's Central Office. The Council will select Consulting Teachers from among qualified applicants in accordance with procedures set forth in the Guidelines, provided that the Council will attempt to select Consulting Teachers who reflect the diversity of the School District's teachers. The decision of the Council with regard to the selection of a Consulting Teacher will not be subject to the grievance/arbitration procedure in Article __ of the Agreement.

3. The number of Consulting Teachers in any school year will be determined by the Council based upon participation in the PARP, the budget available for the PARP, and other relevant considerations.

4. a. A Consulting Teacher will be a full-time position. The term of a Consulting Teacher will be two (2) years, and a teacher may not serve in the position for more than two (2) consecutive terms. A teacher may not be appointed to an administrative position in the School District while serving as a Consulting Teacher or for one (1) full school year after serving as a Consulting Teacher.

    b. A teacher will continue to receive his or her regular salary and fringe benefits while serving as a Consulting Teacher, and will accrue seniority for the time served as a Consulting Teacher in the same manner and for the same purposes as if he or she had remained in his or her regular teaching position. In addition to his or her regular salary and fringe benefits, a Consulting Teacher will receive an annual stipend of $__,000 to compensate

him or her for duties related to the position.

c. Upon completion of his or her service as a Consulting Teacher, a teacher will have the right to return to the same teaching position that he or she held prior to serving as a Consulting Teacher, or, if such position no longer exists, to a substantially equivalent position, provided that if a Consulting Teacher resigns prior to the end of his or her term, he or she may be placed for the remainder of said term in any teaching position that is substantially equivalent to the position that he or she held prior to serving as a Consulting Teacher.

5. The Council will oversee the work of Consulting Teachers, and make a written evaluation of the performance of each Consulting Teacher at the end of each school year. A copy of the written evaluation, and all written documentation relied upon by the Council in making said evaluation, will be submitted to the Consulting Teacher, and he or she will have the right to submit a written response to such evaluation.

6. The Council may remove a Consulting Teacher from the position at any time because of the specific needs of the PARP, inadequate performance as a Consulting Teacher, or other just cause. Prior to the effective date of such removal, the Council will provide the Consulting Teacher with a written statement of the reasons for the removal, and, at the request of the Consulting Teacher, will meet with him or her to discuss said reasons. The decision of the Council to remove a Consulting Teacher will not be subject to the grievance/arbitration procedure in Article __ of the Agreement.

7. The Council may provide in the Guidelines for the appointment of part-time Consulting Teachers as necessary to meet the specific needs of the PARP. Sections D(1), (2), (5) and (6) will apply to part-time Consulting Teachers.

***COMMENT***

*One of the first questions that must be answered in regard to Consulting Teachers is whether the position should be full-time, inasmuch as the answer will impact on various other provisions. The illustrative contract article answers this question "yes," for both policy and practical reasons. As to the former, because of the importance of the functions performed by Consulting Teachers—including the impact that they have on the careers of their colleagues and the quality of classroom performance in the School District—the position should be seen as one of stature, and the teachers serving in the positions should not be distracted by other job responsibilities. Moreover, because of the training that necessarily will be required for Consulting Teachers, and the improved performance that likely will come with experience, the illustrative contract article envisions each Consulting Teacher as working with a number of Participating Teachers. As a practical matter, his or her workload in this capacity probably will make it impossible simultaneously to hold a full-time teaching position. And, the option of a corps of individuals who serve as part-time Consulting Teachers/part-time regular teachers strikes us as the worst of both worlds.*

*Notwithstanding the above, it may be necessary—particularly in smaller school districts or school districts that lack the resources to hire replacements for those teachers who serve as Consulting Teachers—to compromise in this regard, in which event Section D(4)(a) could be rewritten to read as follows:*

*A Consulting Teacher will be a part-time position, and a teacher serving in such position will continue to hold his or her regular teaching position. While performing his or her func-*

*tions as a Consulting Teacher, the teacher will be released from his or her regular teaching duties. If, in carrying out their responsibilities as Consulting Teachers, teachers find it necessary to work beyond the regular work day, they will be compensated for such additional work in accordance with Article __ (Compensation) of the Agreement. The Council will be responsible for making the necessary arrangements to implement this Section.*

*If the position of Consulting Teacher is part-time rather than full-time, other provisions in Section D(4), including those dealing with compensation, Section D(4)(b), job return rights, Section D(4)(c), and authorization for the use of part-time Consulting Teachers, Section D(7), would have to be deleted or revised.*

*Although the Council should have discretion in establishing the qualifications for Consulting Teachers, it may be appropriate in order to avoid the possibility of an abuse of that discretion to establish a contractual floor. Section D(1) does this (the two qualifications listed are illustrative only). The use of the word "minimum" should be emphasized: the Section is not in any sense intended to prevent the Council from including in the Guidelines additional qualifications.*

*Section D(2) serves the somewhat analogous function of avoiding even the appearance of undue favoritism in the selection of Consulting Teachers by assuring that the procedure for selecting such Teachers is open and above-board.*

*Section D(4)(a) limits the term of a full-time Consulting Teacher to two consecutive two-year terms. This reflects a balance between two competing considerations. On the one hand, a Consulting Teacher will, over time, become more skilled in performing his or her functions. On the other hand, the essence of the PARP is assistance and review by "peers," which means that the Consulting Teachers must remain classroom teachers and not become a* de facto *corps of administrators/supervisors. The fact that the illustrative contract article draws the line at four consecutive years does not, of course, mean that this is the ideal break point in all situations.*

*Because a teacher's employment with the School District is not at risk by virtue of his or her service as a Consulting Teacher, the illustrative contract article provides less protection for Consulting Teachers than it does for Participating Teachers. Equity demands, however, that Consulting Teachers should be entitled to certain protections—and at the very least should not be subject to removal for arbitrary reasons. Section D(6) provides that a Consulting Teacher may be removed from the position only because of "the specific needs of the PARP, inadequate performance as a Consulting Teacher, or other just cause," and that he or she will receive advance notice and has the right to a hearing before the Council.*

*Although it is a final decision by the Council, and a Consulting Teacher may not challenge his or her removal through the contractual grievance/arbitration procedure, he or she will have certain appeal rights in other forums. Because Section D(6) provides that the removal only may be for specified reasons, a Consulting Teacher has a "property interest" in the position, entitling him or her to certain constitutionally-mandated due process rights which can be pursued in court.* See *Section F.*

## E. Confidentiality

1. Except as otherwise provided in Section E(2) below, all communications among the Council, Participating Teachers, and Consulting Teachers, and all documents produced in connection with the PARP, will be confidential, and will be used solely for purposes of the PARP. Said documents will be kept in special files maintained by the Council, unless the PARP is discontinued, in which event the files will be maintained by the School District's Office of Human Resources subject to the confidentiality restrictions set forth in this Article.

2. a. The communications and documents referenced in Section E(1) above may be used by the Association, the School District, Consulting Teachers, or members of the Council to defend against any proceeding that may be brought by or on behalf of a Participating Teacher or Consulting Teacher.

b. All documents that have been submitted to an NTP, an ETP, or a Consulting Teacher during his or her participation in the PARP may be used by him or her in any proceeding that he or she may bring to challenge any action taken as a result of, or in connection with, his or her participation in the PARP. At his or her request, an NTP, an ETP, or a Consulting Teacher will be given access to any communications or documents relied upon by the Association, the School District, Consulting Teachers, or members of the Council to justify the action in question.

***COMMENT***

*Although the conventional wisdom is that the PARP will work more effectively if all communications and documents are treated as confidential, and used only for purposes of the PARP, a caveat must be entered. Any local association or school district that is involved in a peer assistance and review program, and any teacher who serves on a joint governing body or as a consulting teacher, potentially may be subject to civil liability claims under the common law and a host of federal and state statutes by a participating teacher against whom an adverse employment action is taken. These include claims of unlawful racial or gender discrimination, defamation for critical comments made about a participating teacher, interference with contractual relations, and violation of constitutional rights for actions allegedly taken without affording a participating teacher the requisite due process or in retaliation for the exercise of protected First Amendment rights. Analogous claims also may be filed against a local association, a school district, and members of a joint governing body by a teacher who alleges that he or she was improperly denied, or removed from, a Consulting Teacher position. Section E(2)(a) of the illustrative contract article recognizes this possibility, and allows the relevant communications and documents to be used in defending against such claims.*

*In an effort to balance the scales and ensure due process, Section E(2)(b) provides that a teacher who is challenging an action taken as a result of, or in connection with, his or her participation in the PARP may use in that proceeding the documents that have been submitted to him or her during participation in the PARP. In order to preserve the confidentiality of certain dealings between the Council and Consulting Teachers, the Section does not give the challenging teacher access to all communications made and documents produced in connection with the PARP. But the Section does require the defending party in the proceeding to weigh the importance of confidentiality in planning its defense, by giving the challenging teacher access to "any communications or documents relied upon…to justify the action in question."*

## F. Application of Agreement

Except as otherwise expressly provided in this Article, the Association, the School District, and all employees of the School District, including both bargaining unit and non-bargaining unit employees, reserve any and all rights granted to, and remain subject to any and all obligations imposed upon, them by law, regulation, School District policy, or the Agreement.

***COMMENT***

*The purpose of this Section—which is essentially what the law would provide in the absence of an agreement by the parties to the contrary—is to eliminate any unwarranted negative inferences* vis-a-vis *other aspects of the employment relationship because of the PARP. One example of such an unwarranted inference would be that the mere existence of the program relieves the Schoo! District of its obligation to comply with other laws, regulations, or contract provisions regarding the evaluation of teachers who* are not *participating in the PARP, or regarding matters other than evaluation for teachers who* are *participating in the PARP.*

*The Section also has relevance to the previous discussion of the appeal rights of Participating Teachers and Consulting Teachers. Potentially, a Participating Teacher could challenge an adverse employment action, and a teacher could challenge his or her failure to be selected for, or removal from, a Consulting Teacher position, in various forums—i.e., the contractual grievance/arbitration procedure (alleging absence of "just cause"), the Equal Employment Opportunity Commission or a counterpart state agency (alleging racial, gender, or other prohibited discrimination), or the courts (alleging constitutional, statutory, or common law violations). For reasons explained previously, the illustrative contract article denies access to the grievance/arbitration procedure with regard to actions of the Council (including such final actions as referring experienced teachers to the PARP, and the selection and removal of Consulting Teachers). And, as indicated in the Comment to Section C, a school district may insist—as the* quid pro quo *for agreeing to give a local association a significant role in the evaluation process—that the grievance/arbitration procedure also be closed to actions taken by the school district to implement the recommendations of the Council. The parties could not, however, even if they were inclined to do so, deny a teacher access to available administrative and judicial forums. This Section not only acknowledges that fact, but is designed affirmatively to indicate that these forums should remain open to teachers, and, indeed, Section E(2)(b) assures that teachers have the information necessary effectively to pursue their challenge. There are several reasons for taking this position.*

*To begin with, access to available administrative and judicial forums to challenge actions taken as a result of, or in connection with, participation in the PARP is at least part of the rationale for excluding from the grievance/arbitration procedure actions of the Council, and perhaps even actions of the School District that implement the Council's recommendations. Moreover, unlike the grievance/arbitration procedure—which generally is under the complete control of a local association—the administrative and judicial forums can be utilized by a teacher without the approval or support of a local association. A local association can decide, after considering all of the relevant factors, whether it wants to become involved in the proceeding, and, if so, on which side.*

## G. Duration

The PARP will continue in effect from school year to school year, unless either the Association or the School Board gives written notice to the other party by May 1 of its intention to terminate the PARP as of the end of that school year.

***COMMENT***

*Because the PARP can be effective only if a local association and a school district remain committed to the program, the contract article should allow for the termination of the PARP if either party is dissatisfied with its operation. Thus, for example, a local association may desire to terminate the PARP if the Council's recommendations "to retain or seek non-renewal or termination are* [not] *routinely accepted and acted upon by the district." Resolution, principle (c).*

*The question is one of timing. Although little purpose would be served by contractually mandating continuation of the PARP, a mid-school year termination could be disruptive, and have adverse consequences for both Participating and Consulting Teachers. Moreover, there must be sufficient lead-time prior to the effective date of termination to make the necessary arrangements for Consulting Teachers to return to their regular positions, and to put other mechanisms in place. The illustrative contract article attempts to balance these considerations by requiring notice by May 1 of intent to terminate as of the end of the school year.*

## H. Bargaining Unit Structure

The School District will not seek to exclude any teacher from the bargaining unit because he or she is a member of the Council, serves as a Consulting Teacher, or in any other way participates in the PARP, nor will it rely on such participation to in any way alter the composition of the bargaining unit.

***COMMENT***

*The Resolution, principle (m), provides that the peer assistance and review program should "[g]uarantee that participating teachers, consulting teachers, and teachers who sit on governing bodies do not lose their Association membership or bargaining unit status by virtue of their participation in the program." This principle is framed in very broad terms, and as a practical matter the primary concern is that members of the joint governing body or consulting teachers may be classified as "supervisors" under the relevant labor relations statute, and for that reason be excluded from the teacher bargaining unit. This concern is discussed at length in the legal analysis in Appendix C of this manual at pages C2-C5.*

*As the discussion in Appendix C in this manual indicates, there is, to our knowledge, nothing in any public sector labor relations statute that would prevent a school district from voluntarily recognizing a local association as the exclusive representative for a unit that includes both rank-and-file teachers and teachers who might under the statutory definition be deemed to constitute supervisors. Section H of the illustrative contract article reflects this principle, and provides the "[g]uarantee" called for in principle (m) of the Resolution. If a school district refuses to agree to this type of provision, it is unlikely that the "circumstances," see Resolution, Preamble, are such as to warrant implementation of a peer assistance and review program.*

# *ATTACHMENT A*
# Text of Illustrative Contract Article

## A. Preamble

The Association and the School District believe that optimum student performance can be achieved only if there is a qualified teacher in every classroom. They believe further that a peer assistance and review program ("PARP")—the primary purpose of which is to improve teaching performance—significantly can contribute to the attainment of this objective. Accordingly, the parties agree as follows:

## B. PARP Council

1. A PARP Council ("Council") will be established promptly after the effective date of the Agreement. The Council will consist of nine (9) members, including the Association President and four (4) other members appointed by the Association, and the Assistant Superintendent for Personnel and three (3) other members appointed by the School District. The Council will establish its own rules of procedure, including the method for the selection of a Chairperson.

2. The School District will appropriate not less than _____ dollars ($_____) each school year for use by the Council in carrying out its responsibilities. The Council may expend this money for its own operating expenses, retaining consultants, and any other costs incurred in implementing the PARP, but this appropriation will be independent of the compensation that is paid to Consulting Teachers. Any portion of an annual appropriation that is not expended during the school year in question will be carried over for use by the Council in the succeeding school year, and said carryover will reduce the amount that the School District is obligated under this Section to appropriate for such succeeding school year. The School District, in addition, will provide the Council with appropriate administrative and clerical support.

3. The Council will establish its own meeting schedule. Such meetings may take place during the regular workday, in which event teachers who are members of the Council will be released from their regular duties without loss of pay. If, in carrying out their responsibilities as members of the Council, teachers find it necessary to work beyond the regular workday, they will be compensated for such additional work in accordance with Article __ (Compensation) of the Agreement.

4. The Council will, among its other functions, conduct as part of the in-service training program at the beginning of each school year a PARP orientation program, which will be designed to explain the purposes, structure, and operation of the PARP to teachers and members of the administration.

5. The Council, by majority vote, will adopt PARP Guidelines ("Guidelines") for effectuating the provisions of this Article. Said Guidelines will be consistent with the provisions of the Agreement, and to the extent that there is any inconsistency, the Agreement will prevail. The Council may amend the Guidelines from time-to-

time as it deems appropriate, provided that any such amendment will have prospective effect only.

## C. Participating Teachers

A Participating Teacher is a teacher who receives assistance through the PARP in an effort to improve his or her instructional skills, classroom management, knowledge of subject, and related aspects of his or her teaching performance ("teaching performance"). There are three (3) categories of Participating Teachers as follows:

*1. New Teacher Participants*

a. In order to help them successfully begin their careers in the School District, all newly-hired teachers who have not previously participated in the PARP, including newly hired teachers with previous teaching experience, are required to participate in the PARP during their first year of service in the School District ("New Teacher Participant" or "NTP"). The purpose of such participation is professional development and evaluation. The Council may exclude a newly hired teacher from the PARP because of special job-related considerations.

b. The Council will assign a Consulting Teacher to work with the NTP. At the request of the NTP or the assigned Consulting Teacher, or on its own initiative, the Council may assign a different Consulting Teacher to work with the NTP at any time during the school year.

c. (i) Based upon direct classroom observations, conferences, and such other means as may be appropriate, the Consulting Teacher will assist the NTP to achieve as high a level of teaching performance as possible. Prior to December 1 of the school year, the Consulting Teacher will prepare at least one (1) written Interim Report for the NTP. A copy of each Interim Report will be submitted to, and discussed with, the NTP. Following such discussion, a copy of each Interim Report will be submitted to the Council. The NTP will have the right to submit to the Council a written response to each Interim Report of the Consulting Teacher.

(ii) Prior to April 1 of the school year, the Consulting Teacher will prepare a written Final Report for the NTP, which will include a recommendation as to whether the NTP should be reemployed for the next school year. A copy of said Report will be submitted to, and discussed with, the NTP. Following such discussion, a copy of the Final Report will be submitted to the Council. The NTP will have the right to submit to the Council a written response to the Final Report of the Consulting Teacher. If the Consulting Teacher recommends that the NTP not be reemployed for the next school year, the NTP, at his or her request, will have the right to meet with the Council before it makes a recommendation to the Superintendent, and to be represented at this meeting by a representative of his or her choice.

d. Based upon the Final Report and such other job-related considerations as it may deem relevant, the Council will make a recommendation to the Superintendent regarding reemployment of the NTP for the next school year, and the Superintendent, in turn, will make his or her employment recommendation to the School Board. If the Superintendent's recommendation differs from the Council's recommendation, the latter recommendation also will be submitted to the School

Board, together with such supporting material as the Council may deem relevant.

e. It is the intent of the parties that the PARP be the exclusive method used to evaluate the teaching performance of an NTP. Accordingly, unless otherwise required by law, no other method, whether provided for by statute, regulation, School District policy, or the Agreement, will be used for this purpose while an NTP is participating in the PARP. Such other methods may be used to evaluate the teaching performance of a newly-hired teacher who is not participating in the PARP, provided that a newly-hired teacher will not be terminated or subjected to any other adverse employment action for job-related deficiencies (as defined in Section 2(a) below) other than as a result of his or her participation in the PARP.

*2. Experienced Teacher Participants*

a. Experienced teachers (*i.e.*, with at least one (1) year of prior teaching service in the School District) who exhibit serious job-related deficiencies may be required to participate in the PARP ("Experienced Teacher Participant" or "ETP"). The term "job-related deficiencies" includes chronic deficiencies in instructional skills, classroom management, knowledge of subject, or related aspects of teaching performance, but does not include attendance problems, repeated tardiness, failure to complete required attendance or grade reports, or to comply with other similar administrative requirements or directives, other forms of misconduct, or an isolated problem in the teaching performance of an experienced teacher whose overall teaching performance is satisfactory. The purpose of such participation is to help the ETP correct the job-related deficiencies, and achieve a satisfactory level of teaching performance; and, in cases where the necessary improvement does not occur, to facilitate the removal of the ETP from the classroom or the termination of his or her employment with the School District.

b. The procedure for referring an experienced teacher to the PARP will be set forth in the Guidelines, provided that the final decision to refer will be made by the Council. An experienced teacher who has been recommended for participation in the PARP, and who objects to such participation, at his or her request, will have the right to meet with the Council before it makes a final decision in this regard, and to be represented at this meeting by a representative of his or her choice. The decision of the Council to refer an experienced teacher to the PARP will not be subject to the grievance/arbitration procedure in Article __ of the Agreement.

c. The Council will assign a Consulting Teacher to work with the ETP. At the request of the ETP or the Consulting Teacher, or on its own initiative, the Council may assign a different Consulting Teacher to work with the ETP at any time during the school year.

d. Consistent with the Guidelines, the Consulting Teacher will use such methods as he or she deems appropriate to help the ETP correct the job-related deficiencies and achieve a satisfactory level of teaching performance. The Consulting Teacher will submit periodic written Status Reports to the Council. The Consulting Teacher will continue to provide assistance to the ETP until he or she concludes that the teaching performance of the ETP is satisfactory, or that further assistance will not be productive, at which time the Consulting Teacher will submit a written Final Report to the Council, which will include a recommendation regarding the future employment status of the ETP. A copy of each Status Report and the Final

Report of the Consulting Teacher will be submitted to, and discussed with, the ETP before it is submitted to the Council. The ETP will have the right to submit to the Council a written response to each Status Report and to the Final Report of the Consulting Teacher. If the Consulting Teacher concludes in the Final Report that a satisfactory level of teaching performance has not been achieved, the ETP, at his or her request, will have the right to meet with the Council before it makes an employment recommendation to the Superintendent, and to be represented at this meeting by a representative of his or her choice.

e. Based upon the Final Report and such other job-related considerations as it may deem relevant, the Council will make an employment recommendation to the Superintendent.

f. It is the intent of the parties that the PARP be the exclusive method used to evaluate the teaching performance of an ETP. Accordingly, unless otherwise required by law, no other method, whether provided for by statute, regulation, School District policy, or the Agreement, will be used for this purpose while an ETP is participating in the PARP. Such other methods may be used to evaluate the teaching performance of an experienced teacher who is not participating in the PARP, provided that an experienced teacher will not be terminated or subjected to any other adverse employment action for job-related deficiencies other than as the result of his or her participation in the PARP.

*3. Volunteer Teacher Participants*

a. An experienced teacher (*i.e.*, with at least one (1) year of service in the School District) who is experiencing teaching performance problems or seeks to improve his or her teaching performance may request the Council to assign a Consulting Teacher to work with him or her under the PARP ("Volunteer Teacher Participant" or "VTP"). The Guidelines will set forth the procedure for selecting VTPs, and the rights and obligations of VTPs. It is expressly understood that the purpose of such participation is to provide peer assistance, and the Consulting Teacher will play no role in the evaluation of the teaching performance of a VTP. A VTP may terminate his or her participation in the PARP at any time.

b. All communications between the VTP and the Consulting Teacher will be confidential, and, without the written consent of the VTP, will not be shared with others, including the Council. The Consulting Teacher will not, without the written consent of the VTP, be called by the Association or the School Board to testify, produce documents, or participate in any way in an arbitration or any other proceeding involving the teaching performance of the VTP.

## D. Consulting Teachers

1. A Consulting Teacher is a teacher who provides assistance to a Participating Teacher pursuant to the PARP. The qualifications for Consulting Teachers will be set forth in the Guidelines, provided that the following will constitute minimum qualifications:

    a. A teaching certificate for the educational level of assignment (e.g., elementary, middle level/junior high, secondary); and

    b. At least five (5) years of experience in the School District as a teacher at the educational level of assignment.

2. In order to fill a position of Consulting Teacher, a notice of vacancy, which includes the qualifications for the position, will be posted in all schools and in the School District's Central Office. The Council will select Consulting Teachers from among qualified applicants in accordance with procedures set forth in the Guidelines, provided that the Council will attempt to select Consulting Teachers who reflect the diversity of the School District's teachers. The decision of the Council with regard to the selection of a Consulting Teacher will not be subject to the grievance/arbitration procedure in Article __ of the Agreement.

3. The number of Consulting Teachers in any school year will be determined by the Council based upon participation in the PARP, the budget available for the PARP, and other relevant considerations.

4. a. A Consulting Teacher will be a full-time position. The term of a Consulting Teacher will be two (2) years, and a teacher may not serve in the position for more than two (2) consecutive terms. A teacher may not be appointed to an administrative position in the School District while serving as a Consulting Teacher or for one (1) full school year after serving as a Consulting Teacher.

   b. A teacher will continue to receive his or her regular salary and fringe benefits while serving as a Consulting Teacher, and will accrue seniority for the time served as a Consulting Teacher in the same manner and for the same purposes as if he or she had remained in his or her regular teaching position. In addition to his or her regular salary and fringe benefits, a Consulting Teacher will receive an annual stipend of $__,000 to compensate him or her for duties related to the position.

   c. Upon completion of his or her service as a Consulting Teacher, a teacher will have the right to return to the same teaching position that he or she held prior to serving as a Consulting Teacher, or, if such position no longer exists, to a substantially equivalent position, provided that if a Consulting Teacher resigns prior to the end of his or her term, he or she may be placed for the remainder of said term in any teaching position that is substantially equivalent to the position that he or she held prior to serving as a Consulting Teacher.

5. The Council will oversee the work of Consulting Teachers, and make a written evaluation of the performance of each Consulting Teacher at the end of each school year. A copy of the written evaluation, and all written documentation relied upon by the Council in making said evaluation, will be submitted to the Consulting Teacher, and he or she will have the right to submit a written response to such evaluation.

6. The Council may remove a Consulting Teacher from the position at any time because of the specific needs of the PARP, inadequate performance as a Consulting Teacher, or other just cause. Prior to the effective date of such removal, the Council will provide the Consulting Teacher with a written statement of the reasons for the removal, and, at the request of the Consulting Teacher, will meet with him or her to discuss said reasons. The decision of the Council to remove a Consulting Teacher will not be subject to the grievance/arbitration procedure in Article __ of the Agreement.

7. he Council may provide in the Guidelines for the appointment of part-time Consulting Teachers as necessary to meet the specific needs of the PARP. Sections D(1), (2), (5) and (6) will apply to part-time Consulting Teachers.

## E. Confidentiality

1. Except as otherwise provided in Section E(2) below, all communications among the Council, Participating Teachers, and Consulting Teachers, and all documents produced in connection with the PARP, will be confidential, and will be used solely for purposes of the PARP. Said documents will be kept in special files maintained by the Council, unless the PARP is discontinued, in which event the files will be maintained by the School District's Office of Human Resources subject to the confidentiality restrictions set forth in this Article.

2. a. The communications and documents referenced in Section E(1) above may be used by the Association, the School District, Consulting Teachers, or members of the Council to defend against any proceeding that may be brought by or on behalf of a Participating Teacher or Consulting Teacher.

   b. All documents that have been submitted to an NTP, an ETP, or a Consulting Teacher during his or her participation in the PARP may be used by him or her in any proceeding that he or she may bring to challenge any action taken as a result of, or in connection with, his or her participation in the PARP. At his or her request, an NTP, an ETP, or a Consulting Teacher will be given access to any communications or documents relied upon by the Association, the School District, Consulting Teachers, or members of the Council to justify the action in question.

## F. Application of Agreement

Except as otherwise expressly provided in this Article, the Association, the School District, and all employees of the School District, including both bargaining unit and non-bargaining unit employees, reserve any and all rights granted to, and remain subject to any and all obligations imposed upon, them by law, regulation, School District policy, or the Agreement.

## G. Duration

The PARP will continue in effect from school year to school year, unless either the Association or the School Board gives written notice to the other party by May 1 of its intention to terminate the PARP as of the end of that school year.

## H. Bargaining Unit Structure

The School District will not seek to exclude any teacher from the bargaining unit because he or she is a member of the Council, serves as a Consulting Teacher, or in any other way participates in the PARP, nor will it rely on such participation to in any way alter the composition of the bargaining unit.

# APPENDIX G

# Cincinnati Public Schools Peer Asssistance and Evaluation Guidelines

*Amended August 1997*

## I. History

The Peer Appraisal Program was initiated as a result of an agreement made between the Cincinnati Federation of Teachers (CFT) and the Cincinnati Public Schools in the Collective Bargaining Contract effective March 11, 1985.

As provided in the contract, a joint committee was established to recommend detailed guidelines for the pilot program. That committee completed its work in June, 1985. The federation and the board accepted its recommendations.

Following acceptance of the recommendations, the Peer Review Panel (PRP) was formed. The panel consisted of four teachers appointed by the federation and four administrators appointed by the superintendent. They refined the guidelines and selected six elementary consulting teachers and four secondary consulting teachers (one each in the four secondary subject matter areas of English, mathematics, science, and social studies) and the Peer Appraisal Program began at the start of the 1985-86 school year.

The PRP evaluated the program after its first year and made several guideline revisions. During the summer of 1986, the panel expanded to ten members (five teachers appointed by CFT and five administrators appointed by the superintendent) and changed the name of the program to the Peer Assistance and Appraisal Program (PAAP) in order to emphasize the assistance mode.

The Peer Assistance and Appraisal Program was expanded to twelve consulting teachers during the 1988-89 school year. Part-time consulting teachers were used first during the 1990-91 school year. Currently, the program consists of up to 20 consulting teacher positions.

## II. Purpose

The Peer Assistance and Evaluation Program has two major roles. First, through its Intern Component, it seeks to assist teachers in their first year in the Cincinnati Public Schools; to refine their teaching skills; and to orient them to Cincinnati Public Schools, including its goals, curriculum, and structure. Through this component, each teacher is appraised and assisted by a consulting teacher and an evaluation of his/her

performance is conducted. This evaluation is used to determine renewal or non-renewal of a teacher's contract and/or to recognize very good and outstanding teachers.

Second, through the Intervention Component, the program seeks to assist experienced teachers who exhibit serious instructional deficiencies. When assigned, consulting teachers work with those teachers to improve their instructional skills and to bring the teachers to a satisfactory level of performance. In cases where improvement of serious instructional deficiencies does not occur, peer assistance and evaluation may result in the removal of such teachers from the classroom and/or the non-renewal/termination of teaching contracts.

## III. Roles of the Peer Review Panel and Principals

### A. PEER REVIEW PANEL (PRP)

The PRP serves as the governing body for the program and determines program guidelines consistent with terms of the Collective Bargaining Agreement and Board Policy. It consists of five teachers selected by the Federation and five administrators selected by the superintendent.

*The PRP*

1. Selects, oversees the work of, and evaluates consulting teachers.
2. Determines the process for selecting appraisees.
3. Receives and reviews observation reports, job target development forms and progress reports, interim status reports, final evaluations, and any other documentation submitted by consulting teachers and others involved in the appraisal process.
4. Reviews the performance evaluation summaries (final appraisals) and recommendations of consulting teachers on their appraisees, and accepts or rejects consulting teachers' recommendations.
5. Considers and acts on appeals by appraisees of appraisals completed by consulting teachers.
6. Oversees and approves in-service training provided to consulting teachers prior to and during the assignment as consulting teachers.
7. Notifies consulting teachers of the times and dates of PRP meetings.
8. Meets with consulting teachers when needed.
9. Provides assistance requested by consulting teachers.
10. Administers the budget.
11. Sets monthly dates for meetings of Pairs with consulting teachers.
12. Provides ongoing in-service training for the school district or specific key personnel on the Peer Assistance and Evaluation Program; its function; the roles of the PRP, consulting teacher and principal.
13. Assists consulting teachers with recruitment of consulting teachers.
14. Meets at least monthly at a regular time.

The Federation President and the Director of Human Resources, or their

designees, shall be responsible for the day-to-day operation of the program. They shall serve alternately on an annual basis as facilitator of PRP meetings and shall be responsible for providing an agenda. Minutes shall be kept for each meeting. The co-facilitators of the PRP shall meet with the consulting teachers at least four times during the school year.

### B. PRINCIPALS

1. Shall conduct annual observations on all teachers not included in the Peer Assistance and Evaluation Program and shall conduct routine appraisals during their third year in Cincinnati Public Schools, or those on appraisal because of change in school and subject, and teachers being appraised for continuing contract, and first-year teachers not covered by PAEP.
2. Orient all teachers new to the building to the local school's policies, procedures, and practices.
3. May visit and make observation reports on any teacher. Originals of all observation reports of teachers in PAEP shall be sent to the appropriate consulting teachers.
4. Shall inform consulting teachers of any concerns about appraisees.
5. May notify PRP of any disagreements with final appraisals made by consulting teachers.
6. May inform PRP at any time of concerns about performance of consulting teachers.
7. Shall provide consulting teachers returning to the classroom with the same or similar teaching assignments and conditions.
8. May refer experienced teachers who demonstrate teaching deficiencies to the Intervention component of the program after having conducted two (2) formal observations.
9. May refer interns who have passed their internships after one year of service, if principals have serious concerns about the teachers' performance after having conducted two (2) formal observations.

## IV. Roles of Consulting Teachers and Program Facilitator

### A. CONSULTING TEACHERS (CT)

1. Shall provide assistance to teachers on their caseloads such as providing or arranging for classroom materials, reviewing curriculum, suggesting and discussing of teaching and classroom management techniques, orienting to record-keeping requirements, demonstrating teaching, arranging for observation of other teachers, and planning for instruction.
2. Shall orient teachers to district-wide goals, the appropriate graded courses of study, and other relevant curriculum materials.
3. Shall observe and evaluate teachers on their caseloads.
4. Shall plan and implement practicum for their interns.
5. Shall develop job targets with their appraisees. (However, the principal may request

that specific school-wide goals for the staff be incorporated into the appraisee's job targets.)

6. Shall meet with the PRP pair monthly to review the consulting teacher's work. (At such conferences, the consulting teacher will present an oral summary of the status of each appraisee with whom he/she works and the assistance provided.)
7. Shall maintain a daily or weekly schedule of activities in the Consulting Teachers' Office.
8. Shall send copies of observation reports and evaluation forms to the principal and to the PRP pairs as completed.
9. Shall be responsible for submitting all documentation to the Personnel Office by the designated dates in accordance with the Collective Bargaining Agreement and these guidelines.
10. Shall observe teachers referred to the Intern and Intervention Components and make recommendations about their participation in the program to the PRP. Shall send reports and recommendations to each PRP member.
11. In the event that a CT cannot complete the appraisal of an appraisee, a second CT shall be assigned. The second consulting teacher shall be responsible for completing the final appraisal after consulting with the first CT if possible.

### B. PROGRAM FACILITATOR

1. Facilitate/Overview all aspects of PAEP
   a. Oversee office procedures.
   b. Set up summer training for consulting teachers.
   c. Assist CT's in writing and/or distributing documentation/monitor progress.
   d. Liaison with Human Resources to clarify caseloads on a continual basis.
   e. Prepare and distribute all materials to Peer Review Panel.
   f. Set up and record minutes of Peer Review Panel meetings.
   g. Communicate guidelines to school-based administrators and to other districts upon request.
   h. Serve on various city-wide committees that impact on PAEP.
   i. Schedule city-wide new teacher in-service.
   j. Schedule weekly CT staff meetings.
   k. Attend all Peer Review Panel meetings and present CT concerns, disseminate information regarding ongoing activities of PAEP.
   l. Maintain close contact with co-facilitators of Peer Review Panel.
   m. Assist new CT's in the preparation of investigations.
   n. Monitor progress on all ongoing investigations to make sure they are completed and in the hands of Peer Review Panel before the deadline.
   o. Monitor sign-out sheets in the office and emphasize the importance of keeping these up to date.

p. Develop and implement in-service for new consulting teachers emphasizing the importance of meeting contractual deadlines.

q. Contact building/district level administrators and union officials as necessary.

r. Attend conferences with CT's and their appraisees (difficult cases).

s. Assist CT's in developing caseloads, validating eligibility, and prioritizing candidates for the program.

t. Interacts with visitors as it regards to PAEP.

u. Represents district and PRP as necessary.

v. Other duties as assigned by PRP.

### C. RIGHTS AND RESPONSIBILITIES

*CT Appraisal*

The PRP shall oversee the work of consulting teachers. The Peer Review Panel shall make a written evaluation of each consulting teacher's work by June 1 of his/her first year as a consulting teacher, using a form determined by the PRP.

Before completing the evaluation, PRP shall collect information from principals and appraisees who work with the consulting teachers using forms developed by the PRP. Consulting teachers shall not receive a formal evaluation during subsequent years in the position, unless the PRP places a consulting teacher on appraisal because of serious performance concerns. All documentation submitted to the PRP regarding consulting teachers' appraisals and/or job performance shall be made available to the consulting teacher involved. The Final Performance Evaluation Form shall be placed in the consulting teacher's personnel file upon request by the consulting teacher.

The PRP may collect information from principals and appraisees who work with consulting teachers during non-appraisal years. In addition, any concerns or comments regarding the work of the consulting teachers on the part of principals or teachers can be directed to the co-facilitators of the PRP at any time. These written concerns or comments shall be shared with the consulting teacher involved.

### D. RETURN OF CT TO CLASSROOM

Upon completion of their assignment to the PAEP, consulting teachers have the right to return to their original schools and to the same or similar teaching assignments and conditions with no loss of building seniority.

It is understood that the PRP may return any consulting teacher to a classroom position at any time following a conference with the consulting teacher to discuss the reason for reassignment. This may occur because of changes in the subject areas and grade levels of appraisees assigned to the Peer Assistance and Evaluation Program or because of concerns about the consulting teacher's work performance.

If reassignment occurs during the school year, the consulting teacher shall have the right to return to his/her original school and to the same or similar assignment and conditions, with no loss of building seniority. If a consulting teacher, because of reduction in caseload, is to be returned to the classroom and there is more than one consulting teacher in that area, the decision will be made based on 1) seniority as a consulting teacher, and 2) seniority in the school system.

A consulting teacher must remove his/her name from the leadership list and cannot take an administrative position for one year after serving as a consulting teacher. A PRP member may not apply for the position of consulting teacher for a period of one year following his/her service with the PRP.

### E. CT CONTRACTUAL PERIOD/PART-TIME POSITIONS

A consulting teacher shall serve in the position for a maximum of two consecutive years. If a teacher serves as a .5 or greater part-time consulting teacher for one year, it shall count as 1 of the 2 contractual years posted for this position.

The PRP shall appoint part-time CT's in areas where there are only one or two appraisees and/or to conduct investigations. Such CT's will receive $2,000 if 2 appraisees, $1,500 if one and will be allocated up to 12 substitute days per appraisee. They shall assume all duties of a consulting teacher including monthly staff meetings. A full time CT (mentor) will be assigned to assist them if possible. After two years, the part time CT may reapply for the position.

### F. PROGRAM FACILITATOR/CT PAY

The program facilitator and consulting teachers shall be paid according to the negotiated Teacher Salary Schedule and receive lead teacher stipends consistent with the Career in Teaching Program agreement, for conferences and in-service activities after school and/or during the summer. A consulting teacher who is not a lead teacher shall receive an annual stipend of $3,000. Absence, tardiness, and leave requests shall be reported to the designated administrator.

### G. CASELOAD

A full-time consulting teacher shall have a maximum caseload of 14. A first-year intern shall be counted as 1.0. A teacher serving a second or third year as an intern shall be counted as 1.5. A teacher involved in the intervention component shall be counted as 1.5.

## V. Selection of Consulting Teachers/Program Facilitator

Program facilitator and consulting teacher positions shall be posted in all schools and in the Board's central offices by the Personnel Branch. Program Facilitator and consulting teachers are lead teachers. The PRP shall consider any lead teacher applicant(s) who is properly certified for an available consulting teacher position. However, if no lead teacher applies who is qualified for the position, the PRP may consider non-lead teacher applicants. The position of program facilitator shall be filled preferably by one who has served as a consulting teacher.

The following shall apply if CT positions cannot be filled with lead teachers. Minimum qualifications for the position are:

1. Ohio teacher's certificate for subject area of assignment or appropriate license.
2. Five years as a teacher in the subject matter field of assignment in Cincinnati Public Schools.
3. Consistently very good or outstanding appraisals.
4. Must be currently a classroom teacher or have been in a classroom position or serving in the discipline for which you are applying within the past two years in the Cincinnati Public Schools.
5. Must be a career-level teacher. Should no lead or career teacher apply, the panel may consider a resident level applicant. The position of the Preschool-Kindergarten consulting teacher will be filled by a resident level teacher for the 1996-97 time frame only since no career or lead teacher applied for the Preschool position for the 1996-97 school year.

6. Program Facilitator will be a lead teacher.

Applicants shall provide professional references from a teacher and a principal with whom they have worked. The PRP shall select consulting teachers from among applicants meeting minimum qualifications, shall review the wording of the vacancy announcement, and may develop other selection procedures.

Teachers will be chosen for the position of consulting teacher for a one-year period; if they are not activated during that time because the caseload does not warrant it, they will have to reapply.

## VI. Internship

### CASELOADS

All teachers in their first year under contract with the Cincinnati Public Schools, and all long-term substitute teachers who are filling a vacancy or are expected to remain in the same assignment throughout the school year and who are hired before December 1, shall be assigned to a consulting teacher and shall be considered interns, unless caseload limits are reached for available consulting teachers. In that event, beginning teachers without prior experience in regular teaching positions shall receive priority and those new hirees, whose prior teaching experiences are recent and whose current teaching practices are successful, may be excluded from the program.

Interns who teach multiple subjects at the middle school and high school level shall be added to only one consulting teacher's caseload.

If a long-term substitute teacher is hired before December 1 to fill a vacancy, the consulting teacher shall assist and evaluate the long-term substitute, if caseload permits, and there are no intervention teachers waiting to be assigned. A long-term substitute who is hired after November 30, and who receives a contract for the following year, will be considered an intern for the first contract year.

If such long-term substitute teachers (assigned to consulting teachers as described above) receive contracts for the following school year, they shall not be interns during their first year under contract, unless they received a less-than-satisfactory evaluation.

### CONTINUATION OF INTERNS

Teachers in their second year under contract, who receive less-than-satisfactory appraisals, but are not dismissed, shall continue as interns assigned to consulting teachers.

### INTERN GUARANTEE

If an intern has passed his/her internship after one year of service, but during the following school year, his/her principal has serious concerns about the teacher's performance, supported by two formal observations, the principal may place those concerns in writing to the teacher and to the PRP prior to December 1 and request that the PRP return the teacher to intern status. The PRP shall assign a consulting teacher to observe the teacher, conduct a brief investigation, and report to the PRP with a recommendation as to whether or not the teacher needs further assistance. The PRP shall decide within 20 days of receiving the principal's request whether or not to return the teacher to intern status. In order to expedite the process, the PRP co-facilitators shall act on behalf of the PRP in regard to the above. However, the decision to return the teacher to intern status is subject to approval of the full PRP at its next regular meeting.

If the PRP decides to return the teacher to intern status, it shall assign a consult-

ing teacher to assist and evaluate the intern. The PRP may assign the same consulting teacher who assisted the teacher as a first-year intern, if available. Although, normally a teacher must complete his/her internship within two years, a teacher who is returned to intern status during his/her second year may be continued as an intern for a third year, if the PRP approves, and is not a candidate for a continuing contract.

### EARLY DISMISSAL

If a teacher who has been continued as an intern for the following school year is performing at satisfactory or better level by the December Interim Status Report, the consulting teacher may recommend that the internship process end. If an intern teacher is rated less-than-satisfactory and is continued as an intern for the following school year, he/she may be dismissed if, based on the December interim report, the evaluator rates the teacher unsatisfactory and recommends dismissal. Such recommendations for dismissal prior to the end of the school year must be approved by the PRP.

### RATING

As a general rule, an unsatisfactory rating of an intern shall constitute a recommendation for non-renewal; a marginal rating shall constitute a recommendation that the teacher continue in the intern program for a second year; a satisfactory or better rating shall constitute a recommendation that the teacher has successfully completed the internship.

If a teacher is continued in the intern program for a second year, and receives an overall rating of less than satisfactory for the second year, he/she shall be recommended for non-renewal. However, the PRP reserves the right, in exceptional circumstances, to make recommendations to the superintendent which may differ from the above.

## VII. Intervention

This component of the Peer Assistance and Evaluation Program is intended for teachers with serious deficiencies in their teaching skills or practices who can benefit from the program. Its purpose is to assist them in improving performance.

Any teacher who a principal believes should be placed on evaluation because of concerns about his/her teaching skills or practices or his/her work with students in the classroom shall be referred to the PRP after the principal has conducted two formal observations submitted with the request. Intervention shall be reserved for teachers who have completed three or more years of service in the district. Such referrals may be made to the PRP at any time. The PRP shall notify the teacher that he/she has been referred to intervention.

The PRP shall then determine, using the following procedures, whether or not the teacher shall be placed in intervention.

Step 1: A referral shall be submitted in writing to the Director of Human Resources, who shall forward it to the program facilitator. The PRP shall vote to investigate or not. The program facilitator shall then assign a consulting teacher to investigate.

Step 2: The consulting teacher shall prepare a report and recommendation showing evidence that sufficient input has been received from the principal and the teacher being considered for intervention, and from classroom observations.

Step 3: The consulting teacher shall communicate with his/her pair (one teacher and one administrator) assigned by the PRP to report and to make a recommen-

dation on each case referred. The consulting teacher shall distribute copies of the report to all PRP members.

Step 4: Each pair of panel members shall report to the full PRP which then places the teacher in the intervention process or not, and so notifies the principal, consulting teacher, and teacher. A copy of the consulting teacher's report and recommendation shall be sent to the teacher and the principal. A majority vote of the panel is required to overturn the consulting teacher's recommendation. Intervention may begin at any time. If the PRP does not place the teacher in intervention, the principal retains the prerogative to place the teacher on administrative appraisal, according to the provisions of the Collective Bargaining Agreement.

Step 5: The facilitator shall inform the Director of Human Resources of the panel's final decision.

If a teacher believes that a colleague is in need of the intervention process, he/she may discuss these concerns with the CFT building representative. The building representative may relay these concerns to the principal. If the building representative discusses these concerns with the principal and after one month the principal does not request an investigation for intervention, the building representative may submit the concerns to one of the PRP co-facilitators. The PRP may place such a teacher in intervention following the procedure described above.

### A. PROBLEMS NOT REFERRED TO THE INTERVENTION PROCESS

Principals shall not refer to the PRP cases where performance concerns are not related to teaching skills or practices, or work with students in the classroom. Examples of concerns which should not be referred to the PRP are: repeated tardiness, failure to complete required attendance or grade reports, or failure to comply with other legitimate administrative requirements.

### B. APPEALS FOR THOSE TEACHERS NOT REFERRED TO INTERVENTION PROGRAM

A teacher who has been placed on appraisal by his/her principal because of such performance concerns may appeal the principal's decision not to refer his/her case to the PRP if the teacher believes that his/her work with students in the classroom is, in fact, a primary focus of the appraisal. Such appeals shall be submitted in writing to the PRP, c/o the facilitator and must be substantiated by specific documentation such as the principal's statements, written or oral, regarding the reason(s) for the appraisal and/or by the content of observation reports or other appraisal documents prepared by the principal.

If the PRP determines that teaching skills and practices or work in the classroom with students are at issue in the appraisal, it shall uphold the appeal and begin an investigation (as outlined above) leading to possible placement in the intervention process. The administrative appraisal may continue, at the principal's discretion, unless and until the PRP upholds the teacher's appeal and begins an investigation.

If, following its investigation, the PRP decides not to place the teacher in intervention, the administrative appraisal may resume. If the teacher is placed in intervention, all documents relating to the administrative appraisal shall be removed from the teacher's record. The PRP shall promptly notify the principal upon receiving an appeal and shall notify him/her, as well as the teacher, of its decision at each step of the process described above.

### C. INTERVENTION TIME TABLE

Once assigned, the consulting teacher shall conduct observations and collect as much information as possible regarding the teacher's instructional program and practices. **Within 20 working days from the time it's time stamped and received by the Director of Human Resources , the PRP must vote on the CT's recommendation and notify the teacher and the principal of its decision.**

1. If the teacher is assigned to intervention before December 1, the consulting teacher shall submit the Intervention Summary Report Form to the PRP (copies to appraisee and principal) by the second Friday in March.

The consulting teacher shall recommend that:

a. the intervention process end because of satisfactory or better performance,

b. the teacher be dismissed because his/her performance is seriously deficient and significant improvement is not occurring and is unlikely to occur, or

c. the intervention process should continue.

If the consulting teacher's recommendation is either "a" or "b", he/she shall also submit the Performance Evaluation Summary. If intervention continues, it shall continue during the following school year with the Performance Evaluation Summary for Teachers due no later than the second Friday in March of the following school year. However, the consulting teacher shall provide a status report on the December Interim Status Report form by December 15 of the following school year, which may include any of the three recommendations listed in Paragraph 1 above. A majority vote of PRP is required to overturn the consulting teacher's recommendation.

2. If the teacher is assigned to intervention after December 1, intervention shall continue into the following school year, with the Final Performance Evaluation Summary for Teachers due no later than the second Friday in March of the following school year. However, the consulting teacher shall provide a status report on the December Interim Status Report Form no later than December 15 of the following school year, which may include any of the three recommendations listed in paragraph 1 above.

If, after November 30, the PRP decides to place a teacher in intervention, but the appropriate consulting teacher is at the caseload limit, the intervention process will begin as soon as an appropriate consulting teacher has room on his/her caseload, but no later than September of the next school year. In such cases, the principal may assist the teacher as necessary until the intervention process begins.

The consulting teacher may also recommend, in any of the status or summary reports, a change in teaching assignment or other measures designed to assist the teacher or improve or protect the instructional program.

## VIII. Documentation and Peer Review Panel Review

Each consulting teacher shall complete an interim report on the status/performance of each appraisee no earlier than December 1 and no later than December 15 of each school year, on a form determined by the PRP. Prior to submitting this interim report, consulting teachers shall not be required to complete or submit written observation reports on any appraisee. However, the consulting teacher may submit written observations prior to the December interim status report if problems appear

serious enough to warrant early documentation or if, in the consulting teacher's judgment, written observation reports would be helpful.

All observation reports, job target forms and other documentation including observation reports, if any, by principals shall be submitted to the PRP or to designated PRP members as completed on all appraisees. Completed documentation submitted to the PRP becomes part of the official appraisal record. Appraisees shall receive copies of all such material. Consulting teachers shall provide copies of formal observation reports, interim status reports, and final evaluation forms to principals.

Each consulting teacher shall meet monthly with his/her PRP pair to review the status of each appraisee. Subsequently, the two PRP members shall report to the full PRP on the consulting teacher's recommendations regarding intervention cases, less-than-satisfactory evaluations and interim reports, and any other issues or concerns. For all teachers evaluated less than satisfactory by the consulting teacher, the consulting teacher may be present at the PRP meeting to present documented evidence of his/her findings. In addition, the consulting teacher may be asked to be present at a PRP meeting to present documented evidence of his/her findings on any other evaluations.

## IX. Appeal of Appraisal

### *LESS-THAN-SATISFACTORY RATINGS*

A teacher rated less than satisfactory overall, may appeal the final performance evaluation summary or final summary report (intervention) by submitting a written appeal to the PRP no later than 4:30 p.m. on the third Thursday in March. A statement setting the grounds for the appeal shall be included, along with any previously submitted rebuttals of observation reports, evaluations or other documentation submitted by the consulting teacher.

The teacher is encouraged to attach any other documentation needed to substantiate his/her appeal. A copy of this appeal shall also be submitted to the consulting teacher prior to consideration by the PRP.

Teachers rated less than satisfactory shall have an opportunity to appear before the PRP to present their appeal. Teachers who desire to make presentations must submit those requests along with their written appeals. The PRP may establish time limits and/or other procedures for such presentations.

The PRP shall meet after the third Friday in March, consider the consulting teacher's recommendations and documentation along with the appraisee's written appeal and presentation, if any,and shall then submit its recommendations to the superintendent. The PRP shall inform the appraisee and the consulting teacher of its recommendation to the superintendent no later than the fourth Friday in March.

A majority vote of the PRP shall be required to overturn the consulting teacher's recommendation and/or to uphold the appeal in whole or in part.

The teacher may appeal the PRP's decision to the superintendent, in writing, by the following Friday. The superintendent will consider the appeal and respond prior to action, if any, by the Board of Education regarding non-renewal of the teacher's contract assuming the previous deadlines have been met.

### *SATISFACTORY OR BETTER RATINGS*

Evaluation reports shall be completed and submitted by the second Friday in May. Copies of all appraisal materials shall be furnished to the teacher evaluated prior to placement in the teacher's personnel file. The teacher shall have the right to attach a

written comment to the report.

A teacher who receives an overall rating of satisfactory or better may appeal the final performance evaluation or final summary report (intervention) by submitting a written appeal to the PRP by May 22, or the next working day if May 22 is not a work day. A statement setting forth the grounds for the appeal shall be included, along with any rebuttals of observation reports, evaluation, or other documentation submitted by the consulting teacher. The teacher is encouraged to attach any other documentation needed to substantiate his/her appeal. A copy of this appeal shall also be submitted to the consulting teacher prior to consideration by the PRP.

At its next regular meeting, the PRP shall consider the written appeal and the consulting teacher's recommendations and documentation and may invite both the consulting teacher and the appraisee to make a presentation to the PRP if additional information and/or clarification are needed. The PRP shall consider the appeal at its next regular meeting and inform the appraisee and the consulting teacher of its decision no later than the Friday following the last regular work day of the school year.

The appraisee may appeal in writing, to the superintendent, the PRP's decision within 7 days of receiving the PRP's decision. The superintendent shall respond to the appeal by July 10.

### CONTRACT RIGHTS

Teachers appraised through Peer Assistance and Evaluation retain all rights afforded to them by the Collective Bargaining Contract between the Cincinnati Federation of Teachers and the Cincinnati Board of Education.

## IX. Transfers

A teacher who is in the intervention program or continued for a second year of peer evaluation shall not be eligible for a voluntary transfer, unless approved by the Peer Review Panel.

## X. Conflicts

In the event of conflicts between these guidelines and any provisions of the Teacher Appraisal Manual, these guidelines shall prevail.

These shall constitute the 1997-98 guidelines for the Cincinnati Peer Assistance and Evaluation Program unless both the Board and the CFT agree to any revisions.

# APPENDIX H

# Contract Language for Peer Programs

## BOSTON TEACHERS UNION—
*Article VI—Professional Development*

### 3. Peer Assistance Program

The Professional Development Committee shall help to maintain a voluntary Peer Assistance Program. Teachers who request assistance would be eligible for help from a peer or peers in improving their performance as a teacher. Release time and other professional development resources would be provided to support the peer(s)' efforts within a system-wide budget of at least $40,000 per year or other amount approved by the School Committee. The Professional Development Committee shall engage in ongoing review of this program and provide a report on and additional recommendations for modifying and improving this program at least annually.

The peer assistance activity shall proceed parallel to and independent of the normal supervisory and evaluation process. Peers will not be permitted to testify (in person or through hearsay) in any disciplinary process, although the fact of an employee's participation or decision not to participate would not be excludable.

### F. Center for Leadership Development

The Boston Public Schools and the Boston Teachers Union are committed to establishing the Boston Public School Center for Leadership Development (CLD) which will provide educational leadership development opportunities to BPS parents, teachers, paraprofessionals, substitutes, and administrators. The Boston Public Schools Center for Leadership Development will be a service-based operation designed to integrate and facilitate the coordination of training programs for parents, teachers, and staff in the BPS. It will be the institution primarily responsible for facilitating and coordinating the support and training necessary for implementation of school reform in Boston.

*(d) Peer Assistance*

The BPS Center for Leadership Development will facilitate or provide assistance for teachers. Lead Teachers may be available to work with individual teachers who agree to this form of assistance.

# ***CINCINNATI FEDERATION OF TEACHERS—***
## *Provisions Related to Peer Assistance and Evaluation Program*

### p. Peer Assistance and Evaluation Program

The Board and the Federation established a Peer Assistance and Evaluation Program to improve the quality of teaching in the Cincinnati Public Schools. PAEP has two components:

(a) Internships designed to assist and evaluate teachers during their first year of service in the district; and

(b) Intervention, intended to assist experienced teachers who exhibit serious teaching deficiencies. Intervention shall be reserved for teachers who have completed three or more years of service in the district.

**(1) Life of Program**

The Peer Assistance and Evaluation Program (PAEP) shall continue from year to year unless either the Board or Federation gives notice to the other party by June 1 of its intention to terminate the program effective the following school year.

**(2) Peer Review Panel**

The Peer Review Panel (PRP) shall serve as the governing body of the program, shall select consulting teachers and shall determine program guidelines consistent with terms of the Collective Bargaining Contract and Board policy. The panel shall be responsible for administering the budget of the Peer Assistance and Evaluation Program. It shall consist of an equal number of teachers appointed by the Federation and administrators appointed by the Superintendent.

The PRP shall review the program guidelines every two years.

**(3) Scope of Program**

The Peer Assistance and Evaluation Program shall be available in all teaching fields and ESP categories. Up to 20 consulting teachers (FTE's) shall be assigned by the Peer Review Panel depending on caseloads arising each school year. Additional consulting teachers, if needed, may be funded through the Career in Teaching Program budget. Part time consulting teachers shall be utilized to serve certain teaching fields where there is not a sufficient caseload for a full-time position.

**(4) Caseload for Consulting Teachers**

Caseload of full-time consulting teachers shall be limited to 14. Each second year intern and intervention teacher will count as 1.5 in their caseload.

**(5) Term for Consulting Teachers**

Consulting teachers shall serve in the position for a maximum of 2 years.

**(6) Applicants for Consulting Teachers**

Applicants for consulting teacher positions may not be on the administrative leadership eligibility list. However, a teacher may remove his/her name from the leadership eligibility list in order to apply. A consulting teacher may not be appointed to an administrative position while serving as a consulting teacher and for one full school year after serving as a consulting teacher.

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**(7) Stipend**

Consulting teachers are lead teachers. The PRP shall consider any lead teacher applicant(s) who is properly certificated for an available consulting teacher position. However, if no lead teacher applies, the PRP may select an otherwise qualified applicant who is not a lead teacher.

Consulting teachers shall receive lead teacher stipends consistent with the CTP agreement. However, a consulting teacher who is not a lead teacher shall receive an annual stipend of $3000. This stipend is intended to compensate consulting teachers for conferences, inservice activities, practicum, and other professional duties related to the position, including 5 additional days before or after the school year.

**(8) Mid-Year Dismissal**

If an intern teacher is rated less than satisfactory and is continued as an intern for the following school year, s/he may be dismissed, if, based on the December interim report, the evaluator rates the teacher unsatisfactory and recommends dismissal. In the PAEP, such recommendations for dismissal prior to the end of the school year must be approved by the PRP. In such cases, the teacher shall have the rights afforded to a limited contract teacher facing non-renewal for performance reasons under the Collective Bargaining Contract. Dismissal under this provision shall not afford the teacher the due process rights under O.R.C. §3319.16.

## ***Columbus Education Association—***
## *Section 401.14*

A. The evaluation and any related actions involving teachers during the period of assignment to the Peer Assistance and Review Program (PAR Program) shall be in accordance with the procedures established by the PAR Program Panel rather than in accordance with the provisions contained in the Article 401. Such related actions shall include action by the Board based on recommendations by the PAR Program Panel regarding intern teacher and action by the Board based on reports by the PAR Program Panel regarding teachers who have been previously assigned to the PAR Program for intervention.

B. The provisions of this Article 401 shall apply to teachers assigned to the PAR Program only in the event of administrative action which is not in accordance with the PAR Program Panel procedures. Such administrative action shall only be initiated where the basis for such action is primarily related to concerns other than classroom teaching performance.

C. Any teacher may request to be assigned to the PAR Program by submitting a written request to the Association President. If the teacher requesting assignment to the PAR Program has been given a Notice of Special Evaluation and has more than five (5) years of continuous Columbus teaching experience, such teacher shall be accepted into the intervention phase of the PAR Program. The final determination of whether to admit a teacher with five (5) or less years of continuous Columbus teaching experience to the PAR Program will be made by the PAR Panel.

D. Teachers who have all successful ratings on their most recent evaluation form shall not be recommended for PAR Intervention by an administrative-initiated referral unless the following has been provided:

(4) A serious concern(s) has been identified by the principal or evaluating supervisor and a conference has been held with the affected teacher where the serious concern(s) is identified and discussed with said teacher.

(5) The principal or evaluating supervisor has provided suggestions and/or assistance to the affected teacher to correct the serious concern(s).

(6) If the serious concern(s) has not been resolved, a follow-up conference has been held with the affected teacher to so inform said teacher and, if it is the intention of the principal or evaluating supervisor to recommend the teacher for PAR Intervention, to so inform the teacher during this conference.

(7) A teacher shall not be represented or accompanied by a representative of any employee organization in any conferences required in 401.14D above.

## HAMMOND TEACHER MENTORING PROGRAM

The Hammond Teachers' Federation and the Employer shall continue to support the Hammond Teacher Mentoring Program. The program is developed to create a climate of trust and cooperation in peer coaching among the teachers in Hammond. The parties will continue to explore the feasibility of involving experienced teachers in the process of teacher assessment and shall continue to study additional Intern-Intervention Programs. New information regarding the assessment of teaching and the assessment of learning will be disseminated to professional staff.

## PHILADELPHIA FEDERATION OF TEACHERS–

### *ARTICLE B-V—SECTION 2h*

Peer Intervention Program—The Board and the Union recognize that instructional services should be delivered by a highly qualified and motivated staff accorded the respect and professional treatment to which they are entitled.

Toward that end, the Board and the Union have agreed to fund peer assistance on a voluntary confidential basis to temporary professional and professional employees. The PFT funding will be limited to the provision of office space and support staff for the Peer Intervention Program. The School District shall determine, from year to year, the level of funding for the program. The request for such assistance may be initiated by the employee who 1) believes that his/her teaching competence will benefit from that assistance or, 2) by a satisfactory teacher who ha received no more than one (1) unsatisfactory classroom observation in a rating period. In the event of a second unsatisfactory observation or an unsatisfactory rating, the employee may elect such assistance in lieu of the TIPS program.

The Program of Peer Intervention will be provided in the manner set forth below:

(i). The Peer Intervention Panel shall be composed of nine (9) members, five (5) of whom shall be selected by the Union and four (4) of whom shall be selected by the Board. However, it will take a vote of six (6) to approve any proposal.

(ii). This Panel will set qualifications and procedures for the selection of intervenors, an alternative careers liaison and a coordinator of the program. The Panel shall advertise, as needed, the intervenor, coordinator and alternative careers liaison

positions on a city-wide basis, posting the qualifications and procedures previously developed. The programís professional staff shall be selected in accordance with the posted procedures and the cost of all positions shall be borne by the School District.

(iii). The Panel will review requests for help from individual teachers. The Panel will promptly notify the teacher of the determination of whether assistance will be provided. Yearly, upon receiving funding, the Panel must determine how many teachers it can serve, and set priorities for service.

(iv). The intervenor will develop a plan to assist the participating teacher tailored to the specific needs of that teacher and will work with the teacher directly for not more than one (1) year.

(v). Any teacher who has a reasonable basis for needing such assistance and/or receives a U-rating may recruits assistance from the Peer Intervention Program, in writing, on a form promulgated by the Panel. The Panel will review requests and promptly notify the teacher of the determination as to whether assistance will be provided in that case. Such communications will be kept completely confidential.

(vi). For three (3) months following the start of the intervention period, the principal will not evaluate or observe the participating teacher. However, no intervention process can be initiated after January 15 of any school year.

(vii). All communications between the intervenor and the participating teacher shall be completely confidential. As a condition of the involvement in the program, all participants in the program, including the intervenor and the participating teacher, must consent to the confidentiality provisions set forth in this paragraph. The Board and the Union agree that the intervenor, or any other person involved in the Peer Intervention Program, shall not be subpoenaed by the Board or the Union or called to testify, produce documents or participate in any other way concerning the intervention in any proceeding involving the participating teacher, including potential subsequent proceedings under the Pennsylvania School Code. No arbitrator, in any proceeding under the partiesí control, shall accept evidence regarding such communications.

(viii). Except as otherwise herein provided, the Union, the Board of any participating teacher may exercise any constitutional, statutory, regulatory or contractual right otherwise provided by law, regulation or contract.

(ix). The Board agrees to make available on a best efforts basis, alternative career opportunities for teachers who decide to leave the teaching profession in the course of or following intervention.

(x). Administrative procedures for effectuation of these provisions will be formulated by the Panel in consultation with the Board and the Union and thereafter distributed by the Panel.

(xi). These procedures relate solely to issues of competency and no other grounds of discipline.

(xii). The acts of the Panel, intervenor, coordinator, Union and Board shall be final.

## ***ROCHESTER—SECTION 56***

Intervention, Remediation And Professional Support

1. The Intervention and Remediation component of the CIT Plan is designed to offer all available resources to help improve the performance of experienced teachers who are having serious difficulties in the performance of their professional duties.

2. A teacher can be recommended in writing for Intervention and Remediation by a building principal, other appropriate supervisor or teacher constituency of the

School-based Planning team meeting as a separate group. Such written recommendation is appropriate when a teacher's performance is less than satisfactory. It is expected that such recommendation shall be initiated after reasonable efforts have been made to assist the teacher. The referral for Intervention and Remediation may contain a recommendation as to a plan for remediation and indicate whether a withhold of all or part of the total next salary increase or any other action is warranted.

3. In acting upon the written referral, the Panel may avail to the referred teacher, and to the building principal and/or other appropriate supervisors, an opportunity to appear before the panel or its representatives to provide information germane to the recommendation.

4. The CIT Panel shall vote to accept or reject the referral for Intervention within thirty days of receipt of the referral and state its reasons therefore. If the Panel votes to accept the referral, the Panel shall prescribe a plan of remediation which may include, but is not limited to, assistance by a lead teacher, mandatory inservice, or other professional studies, participation in the EAP, etc. Independent of the authority of the Superintendent of Schools in Section 47, the Panel shall have the authority to impose full or partial salary withhold during the period of intervention and remediation. When a referral of a teacher rated "unsatisfactory" is supported by the CIT Panel review, full salary withhold shall be automatic. The Panel's determination relating to full or partial salary withhold and/or any sanction shall be subject to the grievance procedure contained in Section 14.

5. The determination, reasons therefore, the remedial plan, and the decision concerning salary withhold shall be provided in writing to the Superintendent of Schools, the teacher, and to the building principal, or appropriate supervisor.

6. The plan for remediation will be implemented under the direction of the CIT Panel. The plan will provide for the development of specific performance and professional goals.

7. Teachers participating in Intervention and Remediation will continue to receive assistance until the CIT Panel determines that no further assistance is needed or would be productive, or until the teacher in Intervention and Remediation no longer wishes to participate. The duration of the Intervention and Remediation program for any one teacher shall not extend beyond the start of one third full semester from the date of the initiation of the assistance program.

8. Teachers in Intervention and Remediation shall receive copies of all status reports and will have the right to attach and submit a written reply to the status report forms submitted to the CIT Panel by the lead teachers.

9. The CIT Panel will review all status reports and other information that may be submitted to the Panel. If the determination of the CIT Panel is that Intervention and Remediation was successful, the CIT Panel will issue a report, in writing, to the Superintendent, the RTA President, and the teacher in Intervention.

10. Participation in Intervention and Remediation is voluntary on the part of the referred teacher. If a teacher refuses Intervention and Remediation, nothing herein shall prohibit the District from proceeding with further disciplinary action after that refusal.

11. If the determination of the CIT Panel is that Intervention is not successful, the CIT Panel will issue a report, in writing, to the Superintendent, the RTA President, and the teacher in Intervention. Evaluation and/or discipline procedures, as outlined in sections of the current Contractual Agreement, may then be instituted.

12. Any determination or report of the CIT Panel with respect to a referral for, or the outcome of, Intervention and Remediation, and any reasons therefore, as well as those documents referenced in the CIT "Handbook for Intervention and Professional Support," shall be evidence admissible through exhibits and testimony in any arbitration or a proceeding pursuant to Section 3020-a of the Education Law; provided, however, that any communications, oral or written, between Lead Teachers and teachers in Intervention on matters relevant to Intervention, shall be privileged.

13. The Panel shall develop written procedures for this referral, intervention, and remediation program.

14. If a unit member has been recommended by the CIT Panel for Intervention, and the Board of Education determines probable cause exists to discharge the unit member after the unit member either has refused to participate in Intervention and Remediation or the Panel's Final Report finds that the Intervention has not been successful, and the teacher then elects to contest the charges by submitting the matter to arbitration (Section 39.3), arbitration shall be before a panel consisting of the Superintendent of Schools, the RTA President, and a neutral third person familiar with the arbitral process selected by the Superintendent and the President. Arbitration shall be conducted in accordance with the provisions of CPLR Article 75, except that the cost, if any, for the services of the third person shall be borne equally by the parties.

## Professional Support

The District and the Association recognize the need for more accessible and more immediate peer assistance and support. To that end, the parties agree to establish a formal Professional Support program with the following features:

a. Professional Support may be recommended by a colleague, a building representative, or a building administrator but access to Professional Support is by self referral only. Participation would be voluntary.

b. Participation in Professional Support activities will not be reflected in any personnel materials unless the teacher includes such references.

c. Support shall be provided by other Professional and Lead Teachers as indicated by the CIT Panel.

d. Support may include, but shall not be limited to, counseling, observations of others' classes, demonstration lessons by lead teachers, in-service courses, workshops and conferences.

e. Participation in Professional Support activities shall not prevent referral for Intervention Service.

f. Formal participation in Professional Support activities shall be limited to two full semesters.

## ***TOLEDO FEDERATION OF TEACHERS***—*Article XVIII—Contract Provisions Relating To the Toledo Intern Intervention Program*

A. 1. All first and second year teachers are considered to be members of the bargaining unit.

2. Revised standards and criteria shall be published by the Board free of charge in booklet form to each member of the bargaining unit.

Not withstanding the provisions of Ohio Revised Code Sections 3319.11 and 3319.111, as revised by 1988 Ohio House Bill 330 (see Appendix O), the procedures, time lines, and all other matters regarding evaluation will be governed by the document, The Toledo Plan- Intern, Intervention, Evaluation. Subsequent changes must be mutually agreed by the Federation and the Board.

E. Teachers who are on a four-year contract shall be evaluated once during the last year of the contract for recommendation for contract renewal. One (1) classroom observation, prearranged between the teacher and the administrator for the purpose of making this evaluation, shall consist of at least twenty (20) minutes but not more than fifty-five (55) minutes. Other classroom visits shall not be used for this evaluation. If visitation is excessive, a limit on visitation may be imposed by mutual agreement of the Federation and the Board. Discussion of professional or teaching performance shall be private. The evaluation form agreed to by the Board and Federation shall be used. (See Appendix G.) This section is not intended to prohibit interviews for the record when rules and policies are violated as per Article XXXIV.

When the four-year contract evaluation is rated "unsatisfactory", the Intern Board of Review may assign a consulting teacher, or another peer, to observe and evaluate the teacher. This second evaluation shall be given equal weight with the first. If both evaluations are "unsatisfactory", the teacher could be assigned to the intervention program on a one-year contract should the Intern Board of Review so determine in lieu of dismissal proceedings.

F. The intern-intervention program shall be continued subject to cancellation in its entirety by either the Board or the Federation.

G. Consulting teachers in the intern program will be paid as per Article XXXVIII in addition to regular salary and supplemental contracts held. In the event a department chairperson is selected for active participation in the program, an interim chairperson will be elected to serve. The consultant, after completing his or her assignment, will return to the chairperson's position for one year after which a new election will be held to complete the two-year term or to fill a full two-year term, whichever is applicable.

## Informal Conference

C. An informal conference may be held at a school or work site by an administrator when there are reasonable grounds to suspect that a teacher's conduct has violated a properly established school rule or district policy. The teacher shall have the right to request Federation representation. The issue of such representation shall not

result in changing the proposed conference to a formal meeting as described in this section, below. This conference shall be an oral conference and the only record maintained shall be the date and the subject of the conference.
Classroom instructional performance problems shall be addressed through the provisions of the Intern-Intervention Program, the Toledo Plan evaluation procedures, or through A, above.

P. Interns will not be represented by the Federation in cases where the Intern Board of Review acts to recommend termination or non-renewal of an intern's employment and/or contract. The Board of Review will meet to hear an intern's appeal of its recommendation if requested to do so. In the event an intern is reemployed, the Federation may elect to represent the teacher.

## ***UNITED FEDERATION OF TEACHERS—***
## *NEW YORK CITY BOARD OF EDUCATION—*
## *Article 21.G*

The Board and Union recognize that instructional services should be delivered by a highly qualified and motivated staff, accorded the respect and professional treatment to which they are entitled.

Towards that end the Board and the Union have agreed to provide resources and to provide peer assistance on a voluntary confidential basis to staff who have completed probation and who believe that their teaching competence will benefit from that assistance in the manner provided below:

1. The Peer Intervention Panel shall be composed of nine members, six of whom shall be selected by the Union and three of whom shall be administrators selected by the Board.

2. This Panel will set qualifications and procedures for the selection of intervenors, an alternative careers liaison and a coordinator of the program. The panel shall advertise, as needed, the intervenor, coordinator and alternative career liaison positions on a citywide basis, posting the qualifications and procedures previously developed. The program's professional staff shall be selected in accordance with the posted procedure.

3. The Panel will also design and continually monitor a professional development program that enables the selected staff to meet the goals set forth above.

4. The intervenors shall serve for a four year renewable term.

5. Any teacher who has a reasonable basis for needing such assistance and/or receives a U-rating or formal warning may request assistance from the peer intervention program, in writing on a form promulgated by the Panel. The Panel will review requests and promptly notify the teacher of its determination as to whether assistance will be provided in that case. Such communications will be kept completely confidential.

6. The intervenor will develop a plan to assist the participating teacher tailored to the specific needs of that teacher and will work with the teacher directly for not more than one year.

7. For three months following the start of the intervention period, supervisors will not

evaluate or observe the participating teacher. However, supervisors will otherwise continue to exercise their responsibilities.

8. The Board, the Union, and the participating teacher agree that for any disciplinary action other than an appeal of a previous U-rating, all time limitations within which to bring such actions will be tolled for the three month period in which the supervisor does not evaluate or observe the participating teacher. For such U-rating appeals, the parties agree that the time limitations are tolled for the entire period of intervention.

9. All communications between the intervenors and the participating teacher shall be completely confidential. As a condition of involvement in the program, all participants in the program, including the intervenor and the participating teacher, must consent to the confidentiality provisions set forth in this paragraph. The Board and Union agree that the intervenor, or any other person involved in the peer intervention program shall not be subpoenaed by the Board and Union or called to testify, produce documents or participate in any other way concerning the intervention in any proceeding involving the participating teacher, including potential subsequent proceedings under Section 3020-a of the education law. No arbitrator, in any proceeding under the parties' control, shall accept evidence regarding such communications. If PIP is used as a remedy in a 3020-A proceeding or if the parties agree to use it as a settlement to such a proceeding, this paragraph continues to apply except that if the intervention was not successful, a statement from the program saying "PIP was attempted and not successful" may be submitted into evidence in any subsequent 3020-A proceeding with respect to charges concerning teacher confidence.

10. Except as otherwise herein provided, the Union, the Board or any participating teacher may exercise any constitutional, statutory, regulatory or contractual right otherwise provided by law, regulation or contract.

11. The Board agrees to make available on a best efforts basis alternative career opportunities in the Board and/or the City for teachers who decide to leave the teaching profession in the course of or following intervention through access to other employment alternatives within the system and/or the City; or retraining/redeployment through the Board of Education of New York City.

12. Administrative procedures for effectuation of these provisions will be formulated by the Panel in consultation with the Board and the Union and thereafter distributed by the Panel.

13. These procedures relate solely tot issues of competency and no other grounds of discipline.

14. The acts of the Panel, intervenor, coordinator, Union and Board shall be final.

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